June 01, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this letter in support of Kira Pyne's application to be your law clerk. I had the pleasure of having Ms. Pyne in my Judicial Lawyering class in the Fall of 2022. I believe she would be a successful clerk due to her strong writing skills, passion for litigation, and ability to communicate and work effectively in a collaborative environment.

The judicial lawyering course at GW Law is taken concurrently by students who are externing in a judge's chambers. Ms. Pyne spent the fall semester doing extensive writing in the chambers of Judge Friedman, a judge on the DC District Court. In the course, Ms. Pyne was tasked with writing a judicial opinion. This opinion addressed the admissibility of certain evidence based on an analysis of relevance, probative value, and the constraints of the Fifth Amendment. In this opinion, Ms. Pyne presented a clear, coherent, and persuasive argument justifying her decision to admit the evidence. Because of her externship working for Judge Friedman and writing experience in class, I am confident that she would be able to produce strong written work for your chambers.

In addition to having Ms. Pyne as a student, we have continued to speak extensively about her desire to be a clerk post-graduation. She has expressed a passion for litigation and feels that working as a clerk will both (1) allow her to better understand how judges think and make decisions and (2) continue to hone her research and writing skills, as these will make her a more effective advocate after she has completed her time in chambers. We have also discussed her role as a Student Attorney in the Family Justice and Litigation Clinic, in which she has appeared in court on behalf of clients, an experience that only confirmed her love for the courtroom.

One of the reasons Ms. Pyne is extremely passionate about being a litigator is because she loves working with people. She is personable, courteous, and a responsive team player. During her class and externship experience, she demonstrated both a willingness to take initiative and to receive and respond to constructive criticism and feedback in a productive way.

I highly recommend her.

Sincerely,

Russell F. Canan

Judge
Superior Court of the District of Columbia

Russell Canan - russellcanan@gmail.com - (202) 879-1952

SIXTH AMENDMENT CENTER
P.O. Box 15556, Boston MA 02215

May 29, 2023

To the Honorable Judge:

I am writing to give my highest possible recommendation to Kira Pyne for a judicial clerkship in your chambers. As Ms. Pyne's direct supervisor in her ten-week summer internship at the Sixth Amendment Center (6AC), I witnessed Ms. Pyne's deep commitment to learning about our nation's indigent defense crisis and the law's application to criminal justice across America. Based on Ms. Pyne's outstanding contributions during the internship, and my extensive experience as a law student supervisor and former public defender, I am confident that Ms. Pyne would be a terrific fit for this clerkship.

Ms. Pyne's performance as a 6AC intern was exemplary. In tracking the news, legislation, and caselaw pertaining to indigent defense in various states daily, researching the administration, funding, and delivery of indigent defense systems in multiple states, and researching Texas court structures in preparation for a 6AC evaluation, Ms. Pyne was highly perceptive, thorough, and self-motivated. Ms. Pyne is a thorough and efficient researcher with a formidable ability to aptly characterize even the most nuanced issues in a case.

In discussions with 6AC's Executive Director, staff, and other law student interns, Ms. Pyne drew on her personal background to advance discussions about criminal justice, indigent defense, and racial justice and helped to create a welcoming environment in which others felt comfortable sharing their own perspectives. In supervising Ms. Pyne, I met with her weekly to discuss her projects' progress and reviewed her submissions. Ms. Pyne's work was truly phenomenal and reflected her ability to navigate subtle legal distinctions and details.

As a supervisor of more than six years now, I have learned that a law student who is passionate and genuinely curious about justice, whose work product can be trusted as reliable, and who is a team player are invaluable traits that are rare to come by in one person. Ms. Pyne embodies all these characteristics. Ms. Pyne is clearly an exceptionally intelligent woman who is thoughtful and conscientious about her work. I feel honored to have contributed to Ms. Pyne's legal training, and I am confident that your honor will not regret granting Ms. Pyne a clerkship in your chambers.

If I can further assist in your deliberation, please do not hesitate to contact me at aditi.goel@6ac.org or (408) 242-9336.

Sincerely,

Aditi Goel, Senior Program Manager
Sixth Amendment Center
(408) 242-9336
aditi.goel@6ac.org

WRITING SAMPLE

Kira Pyne
1234 Massachusetts Ave. NW #702 Washington, DC 20005
(508) 944-4594 – kirapyne@law.gwu.edu

This judicial opinion was submitted as my final paper for my Judicial Lawyering class in Fall 2022. The opinion addressed whether two pieces of evidence—a 2015 interview discussing the meaning of Defendant's tattoos and photos of the tattoos—should be admitted. I determined the outcome and justified the reasoning. I have omitted the background section for purposes of length.

This writing sample has not been edited by anyone except me.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division—Felony Branch

LEGAL STANDARD

Relevance

Relevant evidence "has any tendency to make a fact more or less probable than it would be without the evidence." FED. R. EVID. 401. Relevance is determined by analyzing the materiality and probative value of the proffered evidence. *In re L.C.*, 92 A.3d 290, 297 (D.C. 2014). Materiality is determined by whether the proffering party establishes that the evidence is "a condition to prevailing on the merits of his case." *Id.* Probative value means that the evidence has a tendency to" establish the proposition that it is offered to prove." *Id.* Evidence "need not even make that proposition appear more probable than not." *Id.* at 298 (quoting 1 KENNETH S. BROUN ET AL., MCCORMICK ON EVIDENCE § 185 at 733 (6th ed. 2006)). Whether the evidence will serve its purpose is not to be decided while determining admissibility. *See id.*

Relevance requires a "link, connection or nexus between the proffered evidence and the crime at issue." *Johnson v. United States*, 552 A.2d 513, 516 (D.C. 1989). Evidence that is "too remote in time and place, completely unrelated or irrelevant to the offense charged, or too speculative with respect to the third party's guilt," should generally be excluded. *Id.* "In general, if evidence is relevant, it should be admitted unless it is barred by some other legal rule." *In re L.C.*, 92 A.3d at 297.

Probative Value

The District of Columbia has adopted the policy set forth in Rule 403 of the Federal Rules of Evidence. *Johnson v. United States*, 683 A.2d 1087 (D.C. 1996). The determination of evidence as relevant does not end the court's decision on admittance; the court "must also balance the probative value of the evidence 'against the risk of prejudicial impact.'" *Winfield v.*

United States, 676 A.2d 1, 5 (D.C. 1996) (citation omitted). "Evidence … although relevant and otherwise admissible, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." *Johnson*, 683 A.2d at 1090. The court is awarded great discretion in determining whether unfair prejudice outweighs the probative value because "[t]he trial court is in the best position to perform the subjective balancing that Rule 403 requires." *United States v. Long*, 328 F.3d 655, 662 (D.C. Cir. 2003) (internal quotations omitted) (citations omitted).

Fifth Amendment Rights

The Fifth Amendment provides, in pertinent part, that "[n]o person … shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. "[A] violation of the constitutional *right* against self-incrimination occurs only if one has been compelled to be a witness against himself in a criminal case." *Chavez v. Martinez*, 538 U.S. 760, 770 (2003). The word "witness" limits "compelled incriminating communications to those that are 'testimonial' in character." *United States v. Hubbell*, 530 U.S. 27, 34 (2000). "[T]o qualify for Fifth Amendment protection, a communication must be (1) testimonial, (2) incriminating, and (3) compelled." *Hiibel v. Sixth Jud. Dist. Ct.*, 542 U.S. 177, 189 (2004).

Testimonial communication by an accused must explicitly or implicitly either relate a factual assertion or disclose information. *Doe v. United States*, 487 U.S. 201, 210 (1988). Expression of the contents of an individual's mind are testimonial under the Fifth Amendment. *Id.*, n.9. This may include giving objective information to law enforcement that divulges one's mental processes. *See United States v. Kirschner*, 823 F.Supp.2d 665, 669 (E.D.Mich. 2010) (holding that compelling a defendant to divulge his computer password was testimonial because the evidence acquired from the computer was used to incriminate him).

Incriminating evidence "protects against any disclosures that a witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used." *Kastigar v. United States*, 406 U.S. 441, 445 (1972). In other words, the evidence itself does not need to be directly incriminating, but is protected by the Fifth Amendment if the compelled testimony will lead to the discovery of other inculpatory evidence. *Doe*, 487 U.S. at 208.

Not all compelled information that may incriminate an individual is protected by the Fifth Amendment. *Fisher v. United States*, 425 U.S. 391, 410 (holding that a taxpayer cannot avoid complying with a subpoena because the document, whether it contains his writing or someone else's, would incriminate him). Additionally, "there is a significant difference between the use of compulsion to extort communications from a defendant and compelling a person to engage in conduct that may be incriminating." *Hubbell*, 530 U.S. at 34-35. "[E]ven though the act may provide incriminating evidence, a [] suspect may be compelled to put on a shirt, to provide a blood sample or handwriting exemplar, or to make a recording of his voice." *Id.* at 35. Exhibiting physical characteristics is not the same thing as a sworn communication by the defendant. *See id.*

ANALYSIS

I. Admission of 2015 Police Interview Transcript

Relevance

Defendant argues his 2015 interview regarding the meaning of his tattoos is irrelevant because "[he] explains why he himself would never snitch or speak with the police about an incident he was the victim of." Def. Opp. at 7. The government argues Defendant's beliefs against "snitching" are so strong he got tattoos representing them, and make it more

likely he intended to pressure Ms. Styles from speaking to police about Defendant's actions. *See* Gov't Reply at 2.

Part of the transcript is irrelevant and therefore excluded. At the beginning of the transcript, Defendant and the detective are discussing Defendant's guns and habits with shooting. Tr. 1. Defendant's ownership of guns in 2015 is irrelevant to whether he took action to prevent Ms. Styles from testifying against him and does not support any proffered fact by the government regarding the obstruction charge. Only the relevant portions identified in the government's motion will be analyzed as admissible for trial. *See* Gov't Mot. at 4-7.

The relevant portion of the transcript consists of Defendant and the detective discussing Defendant's tattoos, their meanings, and Defendant's general feelings regarding "snitches." Defendant is correct in pointing out that he is only discussing *his* personal feelings in a situation where he was the victim. *See* Def. Opp. at 7. However, the fact that Defendant holds these beliefs about "snitches," and feels strongly enough about these beliefs to get tattoos representing them, is directly relevant in determining whether he intended to prevent Ms. Styles from testifying.

Defendant's statements on whether or not *he* would "snitch" on someone is still relevant about his feelings towards other people "snitching". The jury may still find his statements have no effect on whether Defendant threatened Ms. Styles, but as stated above, the jury's use of the evidence is not considered in the court's relevance determination.

The portion of the interview quoted in the government's motion, *see* Gov't Mot. at 4-7, is not barred from evidence due to irrelevance. The rest of the interview is excluded.

Prejudice

Determining that evidence is relevant does not end the court's inquiry into admissibility. When the probative value of evidence is substantially outweighed by unfair

prejudice, the evidence may be excluded. FED. R. EVID. 403. Defendant argues the proffered evidence may cause a jury to convict Defendant "on irrelevant statements regarding snitching that have no nexus and are not temporally relevant." Def. Opp. at 10. Is it important a jury convicts a defendant on evidence presented at trial, not because they believe a defendant is a habitual criminal and therefore likely committed the charged offense. *See id.*

As discussed by the government, however, Defendant's tattoos are probative into his intent when he spoke with Ms. Styles. Gov't Reply at 2. Defendant discusses his strongly held beliefs regarding "snitches", which are so important to him, he got them tattooed on his body. Defendant also makes clear that his views on "snitching" are not limited to individuals who were actually involved in a crime, but also to those who were only witnesses. *See* Gov't Reply at 4-5. Defendant's discussion with officers from 2015 regarding the meaning of his tattoos are probative into his mindset when he told Ms. Styles to "do the right thing," regardless of whether Ms. Styles was actually intimidated by his statements. *See* D.C. Code § 22-722 (a defendant must "knowingly" use intimidation with the intent to cause an individual to withhold testimony).

Rule 403 requires prejudice to "substantially" outweigh probative value. FED. R. EVID. 403. That is not the case here. There is no evidence of a previous crime committed by Defendant in the 2015 conversation. Defendant was the *victim* of a crime, and although he discusses "putting a knife in him," Gov't Mot. at 7, it is clear Defendant is discussing a hypothetical situation unrelated to the current charges. Defendant's statements of his tattoos are probative of his mindset when he told Ms. Styles to "do the right thing," and is not substantially outweighed by the danger of prejudicing the jury.

Fifth Amendment Rights

The Court will now address whether Defendant's 2015 interview is testimonial. To qualify for Fifth Amendment protection against self-incrimination, a statement by a defendant must be testimonial. *Hiibel*, 542 U.S. at 189. The government argues Defendant's statements are not testimonial, but are admissible as party admissions. Gov't Reply at 5. Defendant argues that because the government is relying on the tattoos, in conjunction with the 2015 interview, Defendant's statements are testimonial for purposes of the self-incrimination clause. *See* Def. Opp. at 13.

Under Rule 801(d)(2)(A) and D.C. practice, "a confession (or other statement) by a defendant may be received in a criminal case as a statement of an opposing party." 2 LAW OF EVIDENCE IN THE DISTRICT OF COLUMBIA § 801.01 (2022). "Nevertheless, receipt of such statements is constrained by a host of constitutional . . . considerations." *Id.* The government seems to be arguing that Defendant's statements are merely admissible because they are party admissions; if this were the case, no statement by a defendant would be protected by the Fifth Amendment. A constitutional analysis must be completed before admitting a statement as a party admission.

An accused's communication is testimonial when the communication relates factual assertion or discloses information, either implicitly or explicitly. *Hiibel*, 542 U.S. at 177. In the 2015 interview, Defendant is explicitly disclosing information about the meanings of his tattoos and his personal feelings regarding people who "snitch" to police. *See* Gov't Mot. at 4-7. Therefore, the interview is testimonial for Fifth Amendment purposes and not merely admissible as a party admission without further analysis.

Defendant's interview statements are incriminating. The government is using Defendant's statements to support their position that Defendant committed obstruction of justice. Although the statements themselves are not directly incriminating, as Defendant is not discussing any crime he partook in, the statements support the notion that Defendant intended to intimidate Ms. Styles when he spoke with her on the phone.

Finally, to qualify for Fifth Amendment protection from self-incrimination, Defendant's statements must be compelled. Defendant's 2015 interview with police fails to qualify as compelled. At the time of the interview, Defendant was not under arrest; he was the victim of a crime and chose to speak with police after the matter, although he chose not to disclose the identity of his shooter. He voluntarily discussed his views on "snitching" to police officers, and supplemented his views by explaining the meanings of his tattoos. *See* Gov't Mot. at 4-7. Defendant is not being called, at this time, to re-explain the meaning of the tattoos. Accordingly, Defendant's statements to police in 2015 do not qualify as compelled, and do not qualify for Fifth Amendment protection from self-incrimination.

Because Defendant's statements to police from 2015 addressing his views on "snitching" and discussing the meanings of his tattoos are not barred by relevance, prejudice, or offense of Defendant's Fifth Amendment rights against self-incrimination, the relevant portions of the interview are admitted into evidence.

II. Admission of Defendant Displaying Tattoos at Trial

Relevance

Defendant walks a detective through his tattoos in the 2015 interview, explaining some that express his views on people who report crimes or act as witnesses for police. *See* Gov't Mot. at 4-7. Accordingly, the government wishes to compel Defendant to display his tattoos at trial.

For similar reasons as the interview itself, the government argues that these tattoos are relevant to show Defendant's state of mind regarding "snitches" and makes it more likely Defendant intended to threaten Ms. Styles when they spoke on the phone. *See* Gov't Reply at 2.

Defendant's tattoos support his statements to police and make it more likely he will be upset at someone who acts as a witness against him for a crime. He feels so strongly that an individual should not act as a witness for police, he got permanent additions to his body that support this sentiment. Display of Defendant's tattoos at trial is relevant toward his intent to commit obstruction of justice.

Prejudice

The Court agrees with Defendant that physically displaying his tattoos to a jury is unnecessary and overly prejudicial. *See* Def. Opp. at 9-10. Defendant points out he has other tattoos which may prejudice the jury; for example, Defendant has a tattoo of a firearm and "phrases … jurors might consider derogatory." *Id.* at 10 n. 5.

It would be completely inappropriate to force Defendant to take off his shirt and show a jury his tattoos. Defendant standing before a jury, displaying his body in a way that requires removing certain articles of clothing, is so derogatory it may distract the jury from analyzing the tattoos themselves. In addition, unless time is taken to cover up every tattoo that is not discussed in the 2015 interview, there is a danger of prejudicing the jury that outweighs the probative value of physically seeing the tattoos.

An alternative to Defendant physically displaying his tattoos is to show jurors photographs of only the relevant tattoos discussed in the transcript. This would eliminate the possibility of prejudicing jurors by showing them irrelevant but provocative tattoos. The tattoos are probative into Defendant's state of mind and are visual depictions of what was described in

the 2015 interview. Limiting the tattoos shown to the jury to pictures of specific tattoos Defendant discussed with police in 2015 eliminates the possibility of the jury being prejudiced by other tattoos depicting guns or derogatory language, and the distraction of seeing Defendant stand shirtless before the jury. There is the possibility of some prejudice by jurors who may not like tattoos generally, but this danger does not substantially outweigh the tattoos' probative value. Defendant showing photographs of only the tattoos discussed in the 2015 interview is not prohibited by Rule 403.

Fifth Amendment Rights

Even though photographs of Defendant's tattoos are not precluded by either relevance or prejudicial value, the Court will analyze whether showing Defendant's tattoos to the jury is prohibited by the Fifth Amendment. To qualify for Fifth Amendment protection against self-incrimination, a statement by a defendant must be testimonial. *Hiibel*, 542 U.S. at 189. Defendant claims his tattoos are testimonial because the government is relying on them for their content. *See* Def. Opp. at 12-13. The government argues they are not testimonial, because like Defendant's original statements to police, Defendant voluntarily displayed his tattoos in the 2015 interview and therefore cannot be barred from displaying them in court. *See* Gov't Reply at 5-6.

Similar to Defendant's statements about his tattoos, the tattoos themselves also reveal information, and the government is relying on this information to show it is more likely Defendant intended to prevent Ms. Styles from testifying against him. *See* Gov't Mot. at 4. The Second Circuit dealt with a similar issue which, although not binding, assists this Court's analysis. In *United States v. Greer*, it was determined a defendant's tattoos were testimonial for Fifth Amendment purposes because the content of the tattoo, the name "Tangela," was used to prove Defendant had a relationship with a person of the same name, thereby allowing jurors to

conclude Defendant had possession of ammunition at issue in the case. *United States v. Greer*, 631 F.3d 608, 613 (2d Cir. 2011).

Here, Defendant's tattoos are being used to show he has a strong, negative mindset towards people who "snitch" to police, which would allow jurors to conclude Defendant intended to prevent Ms. Styles from testifying. *See* Gov't Mot. at 4. Defendant's physical tattoos are therefore testimonial for Fifth Amendment purposes.

For similar reasons to Defendant's 2015 interview with police, physically displaying his tattoos (or showing photographs) is incriminating. The tattoos are being used to further the government's proposition of Defendant's intent to obstruct justice when he spoke to Ms. Styles.

Finally, the Court will analyze whether showing the jury Defendant's tattoos would be compelled under the Fifth Amendment. Defendant argues because the government does not already have independent knowledge of the tattoos, forcing Defendant to display his tattoos and admit their existence is compelled communication. *See* Def. Opp. at 14-15. The Court disagrees with this argument. In the transcript, the detective asks Defendant to "walk [him] through [Defendant's] tattoos." Gov't Mot. at 5. Defendant proceeds to describe his tattoos and it is clear he is physically showing the detective his tattoos as he does so: "This is a mouth screaming. You see the teeth and all that shit?"; "This is my first tattoo . . . I got this when I was, like, 13." Gov't Mot. at 6, 7. It cannot be said that the government has no actual knowledge of the tattoos because Defendant previously physically showed them to police.

The same logic applies here as it did with Defendant's statements about the meaning of his tattoos. The court in *Greer* discussed that the detective observed the defendant's tattoo at the time of his arrest, and no physical force was needed to see it. *Greer*, 631 F.3d at 613. Here, Defendant had voluntarily showed his tattoos to police. *See* Gov't Mot. at 6-7. The court in

Greer also noted that, like voluntarily prepared documents that are not given Fifth Amendment protection, voluntarily getting a tattoo is not a product of government compulsion. *See Greer*, 631 F.3d at 613. No one forced Defendant to tattoo his views of "snitching" onto his body, nor did anyone force him to show them to police officers. Showing pictures of the tattoos to the jury now cannot be said to be compelled under the Fifth Amendment.

Defendant physically displaying his tattoos are testimonial and incriminating, but not compelled; therefore, the Fifth Amendment does not bar photographs of Defendant's tattoos from admission. The photographs are limited to those discussed by Defendant in the 2015 interview, and the photographs must not show any other tattoos to avoid prejudicing the jury.

CONCLUSION

For the foregoing reasons, the government's motion to compel Defendant to display his tattoos at trial is granted.

SO ORDERED.

Applicant Details

First Name	**Mehraz**
Middle Initial	**S**
Last Name	**Rahman**
Citizenship Status	**U. S. Citizen**
Email Address	**mehraz.rahman@student.american.edu**
Address	**Address** Street **2401 Calvert Street Northwest, Apt 1012** City **Washington** State/Territory **District of Columbia** Zip **20008** Country **United States**
Contact Phone Number	**5125904089**

Applicant Education

BA/BS From	**University of Texas-Austin**
Date of BA/BS	**May 2019**
JD/LLB From	**American University, Washington College of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=50901&yr=2010**
Date of JD/LLB	**May 18, 2024**
Class Rank	**33%**
Law Review/ Journal	**Yes**
Journal(s)	**Administrative Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations	**Just the Beginning**

Recommenders

Dam, Andrew
andrew.dam94@gmail.com
8124842288
Epperson, Lia
epperson@wcl.american.edu
202-274-4431
Thompson, Camille
cthompson@wcl.american.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

MEHRAZ RAHMAN
Washington, DC • (512) 590-4089 • mehraz.rahman@student.american.edu • linkedin.com/in/mehrazrahman/

The Honorable District Judge Jamar K. Walker
United States District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

June 11, 2023

Dear Judge Walker,

I am a rising third-year law student at American University Washington College of Law applying for the 2024-2025 term judicial clerkship in your chambers. I specifically admire your contributions to the public service as an Assistant United States Attorney focused on prosecuting white collar crime. I am an applicant with the Just the Beginning Foundation's Share the Wealth program. My professional experiences as a judicial intern and Teaching Fellow, experiences on the American University *Administrative Law Review* and *Human Rights Brief*, and public service work demonstrate that I am a unique match for this opportunity.

Last summer, as a judicial intern to the Honorable Deborah L. Boardman in the U.S. District Court for the District of Maryland, I gained invaluable experience refining my professional communication, legal research, writing, and teamwork skills while gaining exposure to the litigation process. I assisted law clerks with research on pending cases, combed through motions, wrote bench memoranda, discussed case merits, and drafted orders for several cases. I also supported the Judge and clerks during two trials and jury selections and observed dozens of civil and criminal proceedings. I gained experience at the state-level as a judicial intern to the Honorable Judge Laura A. Cordero in the Superior Court of the District of Columbia's Probate Division this spring. There, I learned how to thrive in a high-pressure, fast-paced court, researching and writing legal orders regarding estates, guardianships, conservatorships, and tax matters. My judicial internships allowed me to use skills I developed as a Marshall-Brennan Constitutional Literacy Project Teaching Fellow, where I effectively led discussions and presented the law in a clear and concise fashion.

My role as a staffer for the *Administrative Law Review* and the *Human Rights Brief* has complemented the legal research, writing, citing, and editing skills I learned in my school's comprehensive Legal Rhetoric program. I learned to be detail-oriented and to write succinct, well-researched memoranda and articles about complex legal topics. Through my work with the *Administrative Law Review* as a Senior Articles Editor, I have gained knowledge about administrative law and have exercised my ability to effectively communicate with and edit the work of both my peers and legal practitioners.

My Comment about the Department of Education and Title IX higher education adjudication, which was selected for publication in the *Administrative Law Review*, along with my work on the *Human Rights Brief*, has furthered my commitment to a career in the public service. This commitment builds upon my experience as the University of Texas's Student Body Vice President, where I advocated for over 51,000 students to the administration, Board of Regents, and legislators. As Student Services Budget Committee Chair, I allocated over $42 million to campus departments and completed projects, such as providing free menstrual hygiene products.

I would be honored to work in your chambers as a law clerk, Judge Walker. Enclosed please find my resume, writing sample, transcript, and letters of recommendation. Thank you for your time and consideration.

Respectfully,

Mehraz Rahman

MEHRAZ RAHMAN

Washington, DC • (512) 590-4089 • mehraz.rahman@student.american.edu • linkedin.com/in/mehrazrahman/

EDUCATION

American University Washington College of Law, Washington, DC
Juris Doctor Candidate | GPA: 3.52 May 2024
Journal: Administrative Law Review, *Senior Articles Editor*
Comment: *Biting the Hand That Feeds?: The Need for Independence and Impartiality in the Title IX Sexual Misconduct Process at Colleges and Universities*, 75 ADMIN. L. REV. (forthcoming Sept. 2023)
Publication: Human Rights Brief, *Deputy Columns Editor*
Awards: South Asian Bar Association-DC Public Interest Fellowship | WCL Faculty Merit Scholarship
Honors: Administrative Law Review, *Notice of Superior Work*
Activities: Student Bar Association, *ILead Program Member* | South Asian Law Student Association | Muslim Law Student Association | If/When/How | Women of Color Coalition
Clinic: Civil Advocacy (Spring 2024)

The University of Texas at Austin, Austin, TX
Bachelor of Arts, Plan II Honors | Distinguished Graduate, Special Honors May 2019
Bachelor of Business Administration, Marketing December 2019
Thesis: *Neither Here Nor There*, collection of short stories about Bangladeshi diaspora experience
Awards: Texas Exes, *President's Leadership Award* | Office of the Dean of Students, *Dean's Dozen Award* | Interfaith Action of Central Texas, *Hope Award* | University Honors | Dean's Honors
Activities: Student Government, *Student Body Vice President* and *Chair of Student Services Budget Committee* | Texas Orange Jackets | Friar Society | Counseling and Mental Health Center, *Peer Educator*

EXPERIENCE

Office of the Federal Public Defender for the District of Maryland, Greenbelt, MD
Legal Intern June 2023 – Present
- Research legal issues and write memoranda regarding federal criminal law for trial and appellate attorneys
- Draft pleadings and motions, including appellate briefs and habeas petitions, to be filed in federal court
- Assist attorneys with trial preparation and case investigation, including discovery review and client meetings

Professor Lia Epperson, American University Washington College of Law, Washington, DC
Research Assistant May 2023 – Present
- Research and draft academic articles and legal analyses on education law matters

Marshall-Brennan Constitutional Literacy Project, Washington, DC
Teaching Fellow, Dean's Fellow August 2022 – Present
- Created and taught legal curriculum presented constitutional law and oral advocacy to DC Public School students

Superior Court of the District of Columbia, Washington, DC
Judicial Extern to the Honorable Judge Laura A. Cordero January 2023 – April 2023
- Researched and drafted orders and opinions analyzing probate, estate, guardianship, conservatorship, and tax matters

United States District Court for the District of Maryland, Baltimore, MD
Judicial Intern to the Honorable Judge Deborah L. Boardman May 2022 – July 2022
- Researched and drafted memoranda analyzing discrimination, employment, bankruptcy, and procedural issues
- Reviewed case files, relevant law, and litigant motions and briefings and presented summaries to Judge and law clerks

Mothership Strategies, Washington, DC
Digital Strategist June 2020 – July 2021
- Drafted, coded, and vetted emails as lead strategist on Elect Democratic Women (EDW) PAC

Women's Relief Initiative, Austin, TX
Chief Financial Officer, Director of Business Development April 2020 – September 2021
- Completed legal and financial paperwork for grant applications and to obtain 501(c)(3) status
- Executed projects to provide menstrual products to Guinea, Texas and fund biodegradable period product R&D

ADDITIONAL INFORMATION

Languages: Fluent in Bengali and English
Community Service: Austin Bangla School, *Teacher* | Interfaith Action of Central Texas, *Intern, Volunteer Teacher*
Interests: Reading fiction | South Asian dance choreography and performance | Live music

RAHMAN MEHRAZ S 5241881 04/01

06/01/23 1 OF 1

FALL 2021

LAW-501	CIVIL PROCEDURE	04.00	B	12.00
LAW-504	CONTRACTS	04.00	B	12.00
LAW-516	LEGAL RESEARCH & WRITING I	02.00	A-	07.40
LAW-522	TORTS	04.00	B+	13.20

LAW SEM SUM: 14.00HRS ATT 14.00HRS ERND 44.60QP 3.18GPA

SPRING 2022

LAW-503	CONSTITUTIONAL LAW	04.00	A	16.00
LAW-507	CRIMINAL LAW	03.00	B	09.00
LAW-517	LEGAL RESEARCH & WRITING II	02.00	A-	07.40
LAW-518	PROPERTY	04.00	A-	14.80
LAW-655	IMMIGRATION & NATURALIZATION	03.00	A-	11.10

LAW SEM SUM: 16.00HRS ATT 16.00HRS ERND 58.30QP 3.64GPA

FALL 2022

LAW-508	CRIMINAL PROCEDURE I	03.00	B+	09.90
LAW-605	CONSTITUTIONAL LAW: 1ST AMEND	03.00	A-	11.10
LAW-633	EVIDENCE	04.00	A-	14.80
LAW-690	EDUCATION LAW	02.00	A	08.00
LAW-707B	MARSHALL-BRENNAN SEMINAR	02.00	A	08.00
LAW-707B1	MARSHALL-BRENNAN FIELDWORK	01.00	P	00.00
LAW-770F	ADMINISTRATIVE LAW REVIEW I	01.00	--	--.--

LAW SEM SUM: 16.00HRS ATT 15.00HRS ERND 51.80QP 3.70GPA

SPRING 2023

LAW-550	LEGAL ETHICS	02.00	A	08.00
LAW-601	ADMINISTRATIVE LAW	03.00	B+	09.90
LAW-643	FEDERAL COURTS	04.00	B+	13.20
LAW-707B	MARSHALL-BRENNAN SEMINAR	02.00	A	08.00
LAW-707B1	MARSHALL-BRENNAN FIELDWORK	01.00	P	00.00
LAW-770S	ADMINISTRATIVE LAW REVIEW I	01.00	--	--.--

LAW SEM SUM: 13.00HRS ATT 12.00HRS ERND 39.10QP 3.55GPA

FALL 2023

LAW-611	BUSINESS ASSOCIATIONS	04.00	--	--.--
LAW-621	CONFLICT OF LAWS	03.00	--	--.--
LAW-649	PRE-TRIAL LITIGATION	03.00	--	--.--
LAW-742	POVERTY LAW	03.00	--	--.--
LAW-834	PUBLIC HEALTH LAW & POLICY	02.00	--	--.--

LAW CUM SUM: 59.00HRS ATT 57.00HRS ERND 193.80QP 3.52GPA

END OF TRANSCRIPT

THE UNIVERSITY OF TEXAS AT AUSTIN

OFFICE OF THE REGISTRAR, MAIN BLDG. ROOM 1, AUSTIN, TX 78712-1157, (512) 475-7575

FICE CODE: 3658 IPEDS CODE: 228778 ATP CODE: 6882 ACT CODE: 4240

FACSIMILE TRANSCRIPT

NAME: RAHMAN, MEHRAZ SHABNAM STUDENT ID: XXX-XX-0891 DATE: 06/05/23
DOB: 04/01/97 PAGE: 1

DEGREES AWARDED BY THE UNIVERSITY OF TEXAS AT AUSTIN:

DEGREE: BACHELOR OF ARTS
DATE: MAY 25, 2019
MAJOR: PLAN II HONORS PROGRAM

SPECIAL HONORS IN PLAN II

DEGREE: BACHELOR OF BUSINESS ADMINISTRATION
DATE: DECEMBER 21, 2019
MAJOR: MARKETING

HIGH SCHOOL: LIBERAL ARTS & SCIENCE ACAD HS CLASS OF 2015
AUSTIN TX

ATTENDED: AUSTIN COMMUNITY COLLEGE SUMMER 2013 SUMMER 2016

TRANSFERRED WORK FROM AUSTIN COMMUNITY COLLEGE

DATE	ORIGINAL COURSE DESIGNATION		GR/CR	UT EQUIVALENT	
SUMMER, 2013	HIST 1301	U.S. HISTORY 1	A	3	HIS 315K 3
SUMMER, 2013	HIST 1302	U.S. HISTORY 2	A	3	HIS 315L 3
SPRING, 2014	BIOL 1414	BIOTECHNOLOGY 1	A	4	BIO 4 FLAB 4
SUMMER, 2016	GOVT 2305	U.S. GOVERNMENT	A	3	GOV 3 U S 3
SUMMER, 2016	ACCT 2301	FINANCIAL ACCOUNTING	A	3	ACC 311 3
SUMMER, 2016	ACCT 2302	MANAGERIAL ACCOUNTING	B	3	ACC 312 3
SUMMER, 2016	ECON 2301	MACROECONOMICS	A	3	ECO 304L 3

TOTAL HOURS TRANSFERRED: 022

COURSEWORK UNDERTAKEN AT THE UNIVERSITY OF TEXAS AT AUSTIN

FALL SEMESTER 2015 CREDIT BY EXAM

PSY	301	INTRODUCTION TO PSYCHOLOGY	3.0	CR
M	408C	DIFFEREN AND INTEGRAL CALCULUS	4.0	CR
PHY	302K	GEN PHY TCH CRS: MECH/HEAT/SND	3.0	CR
PHY	302L	GEN PHY TCH CRS: ELEC/LGHT/NUC	3.0	CR
PHY	102M	LABORATORY FOR PHY 302K	1.0	CR
PHY	102N	LABORATORY FOR PHY 302L	1.0	CR

FALL SEMESTER 2015 BUSINESS ADMIN.
LIBERAL ARTS

ECO	304K	INTRODUCTION TO MICROECONOMICS	3.0	B-
E	603A	COMPOSITION/READING WORLD LIT	3.0	A
T C	302	AMERICAN ANIMALS: A CUL HIST	3.0	A-
M	408L	INTEGRAL CALCULUS	4.0	D+

HRS UNDERTAKEN 13 HRS PASSED 13 GPA HRS 13 GR PTS 36.34 GPA 2.7953

SPRING SEMESTER 2016 BUSINESS ADMIN.
LIBERAL ARTS

B A	101S	PROF DEVLOP & CAREER PLANNING	1.0	A
MIS	301	INTRO TO INFO TECHNOLOGY MGMT	3.0	B+
E	603B	COMPOSITION/READING WORLD LIT	3.0	A
HIS	306N	7-INTRODUCTION TO ISLAM	3.0	A
M	310P	MODERN MATHEMATICS: PLAN II	3.0	A

HRS UNDERTAKEN 13 HRS PASSED 13 GPA HRS 13 GR PTS 49.99 GPA 3.8453
UNIVERSITY HONORS SPRING SEMESTER 2016

MORE WORK ON NEXT PAGE

THE UNIVERSITY OF TEXAS AT AUSTIN

OFFICE OF THE REGISTRAR, MAIN BLDG. ROOM 1, AUSTIN, TX 78712-1157, (512) 475-7575

FICE CODE: 3658 IPEDS CODE: 228778 ATP CODE: 6882 ACT CODE: 4240

FACSIMILE TRANSCRIPT

NAME: RAHMAN, MEHRAZ SHABNAM STUDENT ID: XXX-XX-0891 DATE: 06/05/23
DOB: 04/01/97 PAGE: 2

FALL SEMESTER 2016 BUSINESS ADMIN.
LIBERAL ARTS

B A	324	BUSN COMM: ORAL AND WRITTEN	3.0	A-
STA	309	ELEMENTARY BUSINESS STATISTICS	3.0	B-
HED	378D	2-MENTAL HEALTH PROMOTION	3.0	A
MUS	303M	INTRO MUS IN WORLD CULTURES	3.0	A
PHL	610QA	PROBS OF KNOWLEDGE & VALUATION	3.0	A

HRS UNDERTAKEN 15 HRS PASSED 15 GPA HRS 15 GR PTS 55.02 GPA 3.6680
UNIVERSITY HONORS FALL SEMESTER 2016

SPRING SEMESTER 2017 BUSINESS ADMIN.
LIBERAL ARTS

STA	371G	STATISTICS AND MODELING	3.0	A-
MKT	337	PRINCIPLES OF MARKETING	3.0	B-
HED	178E	2-MENTAL HEALTH PROMOTION	1.0	CR
MUS	307	3-JAZZ APPRECIATION	3.0	A
PHL	610QB	PROBS OF KNOWLEDGE & VALUATION	3.0	A
T C	127	CIVIC VIEWPOINTS	1.0	CR

HRS UNDERTAKEN 14 HRS PASSED 14 GPA HRS 12 GR PTS 43.02 GPA 3.5850

FALL SEMESTER 2017 BUSINESS ADMIN.
LIBERAL ARTS

B A	353	INTERNSHIP IN BUSINESS ADMIN	3.0	CR
I B	350	INTERNATIONAL TRADE	3.0	B-
HED	178F	2-MENTAL HEALTH PROMOTION	1.0	CR
HIS	306K	MID EAST: REL/CUL/HIST FND	3.0	A-
T C	358	INTELLIGENCE AND STATECRAFT	3.0	A
BIO	301E	PROBLEMS IN MODERN BIOLOGY	3.0	A

HRS UNDERTAKEN 16 HRS PASSED 16 GPA HRS 12 GR PTS 43.02 GPA 3.5850

SPRING SEMESTER 2018 BUSINESS ADMIN.
LIBERAL ARTS

MKT	372	CONSUMER BEHAV: DIGITAL WORLD	3.0	B-
MKT	372	CONTEMP ISSUES IN MARKETING	3.0	A
S S	301	HONORS SOCIAL SCIENCE	3.0	B+
T C	358	WRITING NARRATIVES	3.0	A

HRS UNDERTAKEN 12 HRS PASSED 12 GPA HRS 12 GR PTS 42.00 GPA 3.5000

FALL SEMESTER 2018 BUSINESS ADMIN.
LIBERAL ARTS

BEN	312K	SECOND-YEAR BENGALI I	3.0	A
T C	660HA	THESIS COURSE: HONORS	3.0	A
NEU	337	TPCS IN NEUROSCIENCE: PLAN II	3.0	B

HRS UNDERTAKEN 9 HRS PASSED 9 GPA HRS 9 GR PTS 33.00 GPA 3.6666

SPRING SEMESTER 2019 CREDIT BY EXAM

GOV	310L	AMERICAN GOVERNMENT	3.0	CR

SPRING SEMESTER 2019 BUSINESS ADMIN.

MORE WORK ON NEXT PAGE

THE UNIVERSITY OF TEXAS AT AUSTIN

OFFICE OF THE REGISTRAR, MAIN BLDG. ROOM 1, AUSTIN, TX 78712-1157, (512) 475-7575

FICE CODE: 3658 IPEDS CODE: 228778 ATP CODE: 6882 ACT CODE: 4240

FACSIMILE TRANSCRIPT

NAME: RAHMAN, MEHRAZ SHABNAM STUDENT ID: XXX-XX-0891 DATE: 06/05/23
DOB: 04/01/97 PAGE: 3

LIBERAL ARTS

MKT	460	INFORMATION AND ANALYSIS	4.0	B
MKT	178	DATA STORYTELLG/VISUALIZATN	1.0	A-
MKT	178	SEO/PAID SOCIAL MEDIA MKTG	1.0	B+
MKT	178	STORYTIZING:NEW DIGITAL MODELS	1.0	B+
BEN	312L	SECOND-YEAR BENGALI II	3.0	A
T C	660HB	THESIS COURSE: HONORS	3.0	A

HRS UNDERTAKEN 13 HRS PASSED 13 GPA HRS 13 GR PTS 46.33 GPA 3.5638
UNIVERSITY HONORS SPRING SEMESTER 2019

FALL SEMESTER 2019 BUSINESS ADMIN.
LIBERAL ARTS

LEB	323	BUSINESS LAW AND ETHICS	3.0	B
FIN	357	BUSINESS FINANCE	3.0	C
MAN	336	ORGANIZATIONAL BEHAVIOR	3.0	A-
MKT	370	MARKETING POLICIES	3.0	A
AFR	317D	3-THE BLACK POWER MOVEMENT	3.0	A

HRS UNDERTAKEN 15 HRS PASSED 15 GPA HRS 15 GR PTS 50.01 GPA 3.3340

CUMULATIVE TOTALS EARNED AS AN UNDERGRADUATE STUDENT AT U.T. AUSTIN
HRS UNDERTAKEN 138 HRS PASSED 138 GPA HRS 114 GR PTS 398.73 GPA 3.4976

*** E N D O F T R A N S C R I P T ***

TSI STATUS INFORMATION

TSI AREA	TSI STATUS	EXPLANATION
ALL	EXEMPT	SAT/ACT/TAAS/TAKS

TEC 51.907 UNDERGRADUATE COURSE DROP COUNTER: X

CORE CURRICULUM SUMMARY

CORE CURRICULUM COMPLETE

THE UNIVERSITY OF TEXAS AT AUSTIN
Office of the Registrar

SEMESTERS, SESSIONS, AND TERMS: An academic year consists of consecutive fall and spring semesters and the following summer session. A semester normally is about sixteen weeks long. The summer session comprises a first term (f) and a second term (s) each six weeks in duration; work also is offered on a nine-week basis (n) and a whole-session or twelve-week basis (w). The same academic credit is given for a course whether it is taken in the long session or the summer session.

ACADEMIC CREDIT: The unit of measure for academic credit is the semester hour. Most courses meet three hours a week in the long-session semester and have a credit value of three semester hours. The same courses meet for seven and one-half hours a week in a six-week summer term and have a credit value of three semester hours. For students enrolled in graduate programs, GPA hours and hours-passed reflect only those graduate-level courses (excluding thesis, dissertation, report, and treatise) and certain in-residence upper-division undergraduate courses taken while the student was enrolled in the Graduate School. Upper-division undergraduate courses taken in the fall of 1999 through the summer session of 2008 are not included.

COURSE NUMBERING SYSTEM: Courses are designated by a three-digit number or a three-digit number with a capital letter affixed. The first digit in the course number indicates the value of the course: 001-099 indicates zero credit value; 101-199 indicates one semester hour credit; 201-299 indicates two semester hours credit; 301-399 indicates three semester hours credit; and so on. The last two digits indicate the rank of the course: 01-19 indicates lower-division rank; 20-79 indicates upper-division rank; and 80-99 indicates graduate rank.

All courses in the School of Law and some courses in the College of Pharmacy are considered professional rank.

Two courses with the same abbreviation and the same last two digits may not both be counted for credit by a student unless the two digits are followed by a capital letter. Some courses may be repeated for credit. Those courses are indicated in the University's catalogs.

PREFIXES AND SUFFIXES: The suffix letters A, B, and X, Y, Z indicate that a part of the course was given. A suffix of A or B divides the course into two parts; X, Y, or Z divides the course into three parts. In each case, the semester-hour credit given for the course is reduced accordingly.

The prefix letters f, s, n, and w indicate the terms of the summer session (see above) in which the course was offered: f indicates first term; s indicates second term; n indicates nine-week session; and w indicates whole session.

For grading systems used prior to 1979, contact the Office of the Registrar.

GRADE		GRADE PTS PER SEM HR
	1979-1980 through 2004-2005	
A	EXCELLENT	4
B	ABOVE AVERAGE	3
C	AVERAGE	2
D	PASS	1
F	FAILURE	0
I	PERMANENT INCOMPLETE (effective fall 1997)	na[1]
X	TEMPORARY DELAY OF FINAL COURSE GRADE	na[1]
CR	CREDIT	na[1]
NC	NO CREDIT	na[1]
*	COURSE IS CONTINUING	na[1]
Q	OFFICIALLY DROPPED THE COURSE	na[1]
W	OFFICIALLY WITHDREW FROM THE UNIVERSITY	na[1]
#	COURSE GRADE NOT REPORTED BY FACULTY	na[1]
S	SATISFACTORY (DEV courses only)	na[1]
U	UNSATISFACTORY (DEV courses only)	na[1]
	2005-2006 to the present	
A	EXCELLENT[3]	4.00
A-		3.67
B+		3.33
B	ABOVE AVERAGE[3]	3.00
B-		2.67
C+		2.33
C	AVERAGE[3]	2.00
C-		1.67
D+		1.33
D		1.00
D-	PASS[3]	0.67
F	FAILURE[3]	0.00
I	PERMANENT INCOMPLETE	na[1]
X	TEMPORARY DELAY OF FINAL COURSE GRADE	na[1]
CR	CREDIT	na[1]
NC	NO CREDIT	na[1]
*	COURSE IS CONTINUING	na[1]
Q	OFFICIALLY DROPPED THE COURSE	na[1]
W	OFFICIALLY WITHDREW FROM THE UNIVERSITY	na[1]
#	COURSE GRADE NOT REPORTED BY FACULTY	na[1]
S	SATISFACTORY (DEV courses only)	na[1]
U	UNSATISFACTORY (DEV courses only)	na[1]

Through the summer session of 2009, plus and minus grades are reserved for graduate, graduate business, and law students enrolled in graduate-level, non-law courses. Beginning fall of 2009, plus and minus grades are valid for all students.

A course dropped by the twelfth class day of a long-session semester (fourth class day of a summer session term) is not entered on the permanent academic record.
Prior to fall 1981, NC grades did not appear on the transcript.

SCHOOL OF LAW

Prior to 1990-1991

The School of Law employed a numeric grading system with the following alpha equivalents:

85 - 100 = A
75 - 84 = B
65 - 74 = C
60 - 64 = D
BELOW 60 = F

1990-1991 - Present

Letter Grade	Grade Points Per Sem Hr.[2]
A+	4.3
A	4.0
A-	3.7
B+	3.3
B	3.0
B-	2.7
C+	2.3
C	2.0
D	1.7
F	1.3

1. na = not applicable to gpa calculation
2. Official grade point averages are not calculated for students in the School of Law.
3. Grade interpretation is applicable to undergraduate students.

NRTRP2 09/01/2009

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a former law clerk for the Honorable Laura A. Cordero, the Presiding Judge of the Probate & Tax Division in D.C. Superior Court. I was one of three law clerks supervising Mehraz Rahman while she served as a judicial intern from January 2023 to April 2023. It is my pleasure to provide an enthusiastic letter of reference for Mehraz as she applies for a judicial clerkship.

Over four months, Mehraz drafted approximately eighty orders of varying complexity and length. Impressively, Mehraz was assigned six orders the law clerks deemed to be long-term projects requiring significant legal research and attention to the record. For example, in completing a draft order on a post-conviction motion, Mehraz researched and wrote on complex legal issues involving both collateral attacks on convictions and an outdated jury instruction articulating an erroneous theory of causation. In her draft, she also reviewed and addressed the evidence presented at trial almost a decade ago and the extensive post-trial and appellate history of the case.

Despite being on several of these more difficult assignments, Mehraz continued drafting orders at a high volume demonstrating an ability to balance her workload and exceptional legal research and writing skills. Nearly all her draft orders, regardless of length and difficulty, required minimal edits. Clearly, Mehraz, regardless of the assignment, took great care in ensuring that her writing was free of errors: legal, factual, or typographical. Furthermore, when she was provided feedback or asked to follow up on an issue, she was receptive, evincing humility and an eagerness to learn.

At the time of Mehraz's internship, D.C. Superior Court transitioned to a new case and motion-tracking software. The new software failed to distinguish between motions ripe for ruling and motions that were not ripe. Mehraz singlehandedly pored over the new software and manually created a list of all ripe motions. This task was laborious and perhaps tedious; however, Mehraz completed the assignment enthusiastically, demonstrating that she is a "team player" with exceptional attention-to-detail and organizational skills: essential qualities in a law clerk.

Beyond Mehraz's intelligence and abilities, I want to call attention to Mehraz's commitment to others. Speaking with Mehraz, I was able to learn about the other demands on her time, her experiences, and her goals. It is clear from her current student involvement, her two judicial internships, her internship with the federal public defenders, her forthcoming comment, and her future clinic experience that she is a dedicated public servant. Undoubtedly, this dedication would serve her well in any judicial chambers.

I am happy to answer any questions that you may have about Mehraz's candidacy.

Sincerely,

Andrew Dam

Andrew Dam - andrew.dam94@gmail.com - 8124842288

June 14, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Re: Clerkship Recommendation for Mehraz Rahman

To Whom It May Concern:

I am writing to recommend enthusiastically my student, Mehraz Rahman, to serve as a clerk in your chambers. In my experience as a law professor, former associate dean, and former civil rights attorney, I believe Mehraz is a truly bright and deeply committed law student whom I am confident will be a tremendous asset to your chambers.

I first met Mehraz when she was a student in my Constitutional Law class in the spring of 2022. In a class of more than 80 students, Mehraz distinguished herself as a thoughtful and dedicated student who actively engaged with the more complex and nuanced aspects of the material. She received an A in my class and distinguished herself as a top student.

Later that year, Mehraz was a student in my Education Law seminar, where she received an A in the class and on her research paper. The class examined historic and current challenges to meaningful educational opportunity in the United States, particularly with respect to racial, ethnic, gender, and economic inequality and its impact on educational access. Mehraz's passion for educational equity and keen insights in this area contributed greatly to the class. Mehraz authored an excellent research paper titled A New Privacy Problem: Students' Privacy Rights in a Post-Dobbs America. The paper examines the possible impact that new abortion regulations may have on privacy concerns of students. Mehraz provided a fresh analysis on an innovative and incredibly timely topic. For these reasons, I was excited to see her application to be my research assistant for this summer. As my research assistant, Mehraz is providing valuable assistance in examining issues in constitutional law, educational access, and civil and human rights. I appreciate her discerning perspectives.

Mehraz shines academically, and is a recipient of the Faculty Merit Scholarship. At the same time, she successfully juggles a host of other commitments. For example, she serves as a staffer on the Administrative Law Review, Deputy Columns Editor for the Human Rights Brief and is active with a number of campus organizations, including the Student Bar Association, South Asian Law Student Association, Muslim Student Association and the Women of Color Coalition. In addition, Mehraz has developed valuable experiential skills as a Judicial Extern in the Superior Court of the District of Columbia and a Judicial Intern in the U.S. District Court for the District of Maryland. While in school, she has also worked as a Teaching Fellow and Dean's Fellow with our Marshall-Brennan Constitutional Literacy Project, helping to create and teach a constitutional law curriculum to DC Public School students.

Mehraz is a gifted, diligent, and well-organized student as well as a kind soul. She is intellectually curious and a perceptive critical thinker. As a law school, we are lucky to count her among our students, and she was an absolute joy to have in my classes. I recommend Mehraz without reservation. If I can be of assistance, please feel free to contact me at (202) 274-4431.

Sincerely,

Lia Epperson
Professor of Law

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

My name is Camille Thompson, and I am currently the Marshall-Brennan Constitutional Literacy Project director at American University Washington College of Law. I am writing this letter of recommendation on behalf of Mehraz Rahman. I have had the pleasure of working with Mehraz as her professor in a legal seminar class and as her direct supervisor during the 2022-2023 academic year when she served as a Marshall-Brennan Teaching Fellow at Ballou High School.

The Marshall-Brennan Constitutional Literacy Project is a national law-related education program that promotes constitutional literacy, legal advocacy, and democratic engagement by placing talented upper-level law students like Mehraz in area public high schools. This year-long program allows law students, also known as Teaching Fellows, to develop foundational lawyering and professionalism skills by working directly with high school students, known as Scholars. While a part of the program, Mehraz supported her scholars' educational goals at Ballou High School by being creative and collaborative while using various problem-solving and critical-thinking skills.

Recently, the Marshall-Brennan Project partnered with Ballou High School in Ward 6, a predominantly underserved and under-resourced neighborhood in Washington, DC. Mehraz worked in a teaching group of four fellows to teach the substantive areas of law and civics. She was able to connect with the high school sophomores, juniors, and seniors in ways that her other teaching partners could not. After each term, I would survey a sample of the class to get an idea of how we could improve their learning and interactions with the Project, and each scholar undoubtedly requested to "have Ms. Mehraz return each term to teach us ." She connected with them and made them more confident in themselves and their abilities.

One of the most memorable moments of Mehraz's performance in the program was when she exhibited patience, empathy, and grit with teaching the students. When classes started for the students at Ballou in August 2022, most of the Scholars were not interested in learning about the law or civics. Mehraz first took the opportunity to learn about the students and then implemented lessons that tied back to what she had learned about them. By the end of the first term, Mehraz had worked one-on-one with the scholars to understand the American judicial system and create legal arguments for a regional moot court competition. One of her students made it to the semifinal round and represented the school. This student has attributed his growth and success as a student and budding leader to the work of Ms. Mehraz and her teaming group. During the National Competition for the Project, Mehraz wrote a glowing nomination of one of her Scholars, T.M., for the Thomas "Tommy" Bloom Raskin's Young Rising Activist award. Her nomination and the growth that T.M. had, in less than one academic year, was recognized by the National Marshall-Brennan Constitutional Literacy organization and United States senators at the reception held at the Rayburn Office Building.

Mehraz used her family's immigration experiences to assist her parents and grandparents in becoming US citizens. That opened up her interest in working with refugees by teaching them English. These experiences propelled her to become a first-generation law student with no lawyers in her family after seeing how difficult navigating the immigration and public school system in America was.

Since her tenure as a Teaching Fellow, I have hired her to continue her work with me as a Dean's Fellow with the Marshall-Brennan Constitutional Literacy Project. Mehraz will be a great asset to your chambers and your working team. She cannot only break down complex legal concepts but connect with everyone on a professional and empathetic level. These are qualities that will serve the courts well. If you have any additional questions or concerns, please feel free to contact me via email at cthompson@wcl.american.edu or via phone at (561) 252-1563.

Best Regards,

Camille A. Thompson, J.D. (Pronouns: she/her/hers)
Director & Adjunct Professor | The Marshall-Brennan Constitutional Literacy Project
Interim Director | Office of Public Interest
American University | Washington College of Law
4300 Nebraska Ave, N.W. |Washington, DC 20016
202.274.4036 | cthompson@wcl.american.edu

MEHRAZ RAHMAN
Washington, DC • (512) 590-4089 • mehraz.rahman@student.american.edu • linkedin.com/in/mehrazrahman/

Writing Sample

The following is a memorandum opinion written during my judicial internship in the Honorable Judge Deborah L. Boardman's chambers at the United States District Court for the District of Maryland. The sample analyzes laws governing potential misconduct in bankruptcy proceedings under 11 U.S.C. § 727, deciding whether to affirm or reverse the United States Bankruptcy Court's discharge of appellee's debt. The memorandum opinion concluded that the bankruptcy court did not err in finding that appellee did not make a false statement under oath, knowingly and with the intent to defraud, regarding a material matter.

My supervising judicial law clerk, Lisa Bergstrom, has authorized me to use this work as a writing sample. Sensitive information has been redacted and altered to maintain confidentiality. While I incorporated feedback from Ms. Bergstrom, I formulated the arguments contained herein on my own and independently edited the memorandum opinion. For brevity, the Conclusion has been omitted.

The relevant facts, also summarized in the Background section of the memorandum opinion, are as follows: Appellee Jonathan Charles Edward Doe ("Doe") bought stock in a corporation without knowing that the corporation owed debts to Appellant Company ("Company"). Company obtained a default judgment against Doe. Doe subsequently filed for bankruptcy under Chapter 7 of the Bankruptcy Code. Around that time, Doe began giving his wife his paychecks to deposit into a Bank of America account that was solely in her name in order to pay bills for his multi-generational household due to garnishment of his own accounts. During the bankruptcy proceedings, Doe also made a mistake on his forms and failed to disclose all required information related to his ownership of a business called MS&R, Inc. Soon after, he remedied these mistakes. In October of 2021, a trial on the merits was held at the bankruptcy court to find whether Doe should be denied discharge of debts under 11 U.S.C. § 727(a)(2) and (4). The bankruptcy court ruled in favor of Doe.

MEMORANDUM OPINION

Appellant Company, Inc. ("Company") appeals from an order that the United States Bankruptcy Court for the District of Maryland entered on November 8, 2021, denying Company's complaint with prejudice. ECF 1-1. On October 27 and 28, 2021, a trial was held on the merits of Company's complaint asking the bankruptcy court to deny entry of a discharge of appellee Jonathan Charles Edward Doe's ("Doe") debt to Company pursuant to 11 U.S.C. § 727(a). *Id.* After this trial, the bankruptcy judge issued an order denying with prejudice all relief sought in Company's complaint asking the bankruptcy court to deny Doe a discharge of his debt accordingly, entered a discharge in Doe's main bankruptcy case. *Id.*; ECF 4-1, at 236. Upon reviewing the parties' briefs, ECF 4, 5, and the record, the Court finds a hearing on the merits unnecessary. *See* Fed. R. Bankr. P. 8012; Loc. R. 105.6. This Court affirms the bankruptcy court's judgment.

I. BACKGROUND

On August 1, 2012, Doe bought stock in a corporation that was party to "a contract for the franchisee sale of the right to do business at a convenience store located in Baltville, Maryland[,]" without knowing that the corporation owed debts to Company. ECF 4, at 1 (Appellant's Br.); ECF 5, at 1 (Appellee's Br.). On September 26, 2014, Company obtained a $65,000 default judgment against Doe in the Circuit Court for Prince George's County based on "a contract for the franchisee sale of the right to do business at a convenience store located in Baltville, Maryland." *Id.* From the date of the judgment, interest at 10 percent per annum accrued on Doe's debt to Company, and the amount owed increased to $90,000. ECF 5, at 1; ECF 3-1 (Appellant's Ex. 21), 15. On April 4, 2019, Doe filed a Voluntary Petition for relief under Chapter 7 of the Bankruptcy Code, thus commencing his bankruptcy proceeding. ECF 4, at 1; ECF 5, at 1.

Around that time, Doe began giving his wife his paychecks to deposit into a Bank of America account that was solely in her name in order to pay bills, including mortgage payments. ECF 4, at 6−7; ECF 3-9 (Appellant's Ex. 4.), 88:11−20. Because Doe and his wife lived in a multigenerational household with their children and Doe's parents, Doe's wife's account was used to pay expenses for the whole family. *Id.* Doe and his father both deposited earnings into his wife's bank account, and the three of them paid their household's bills together.[1] ECF 4-1, at 65, 85−87, 133, 156−57. Around the end of 2018, because Doe's father spent lengthy periods in Canada and did not contribute to the household expenses, Doe was the main breadwinner for the household. *Id.* at 59−60, 64. Doe's wife oversaw the family's bills and deadlines, which were paid from the bank account solely in her name. *Id.* at 110, 137, 143, 174−75. Doe claims that his paychecks were deposited into his wife's individual bank account because, due to Company's garnishment of Doe's bank accounts and the fact that he lost his father's support in paying bills, he needed to make sure that his wife would be able to keep making the payments on their home and other living expenses. ECF 4-1, at 59, 64−66, 125, 133−34, 142.

On May 14, 2019, Bob Public, the Chapter 7 trustee appointed to investigate Doe's finances and administer his bankruptcy estate, presided over a 341 Meeting of Creditors. *Id.* During this meeting, it was revealed that Doe incorrectly listed his own attorney, Joe Smith, in the place of the creditor for Company, ECF 5, at 2, and that he had failed to disclose all required information related to his ownership of a business called MS&R, Inc. ("MS&R"). *Id.*; ECF 5, at 1. During the same meeting, Public instructed Doe to provide additional financial documentation, including

[1] Another reason for the use of Doe's wife's account to pay the family's joint expenses was Doe's father's gambling habit. ECF 4-1, at 63, 90−91. Because payments from Doe's father's account had started to bounce due to his gambling problem, Doe and his father began putting their earnings into her sole account from which she paid the family's bills. *Id.*

business tax returns, business profit and loss statements, and personal bank statements for the previous three months. ECF 5, at 2. Public also instructed Doe to amend his schedules and documentation to replace Joe Smith's name to accurately reflect Company's creditor to provide Company notice about Doe's bankruptcy proceedings. *Id.* On June 13, 2019, Doe filed amended schedules as instructed. *Id.* Upon this filing, Company's counsel was sent the 341 Notice of Meeting of Creditors, putting Company on notice of Doe's bankruptcy proceeding. *Id.*

Company continued garnishing Doe's bank account. *Id.* at 3; ECF 4-1, at 136. On July 1, 2019, after Doe's counselor contacted Company's counsel to notify them of the pending bankruptcy proceedings, Company's counsel proceeded to return $584.65 that was inappropriately garnished after the petition was filed. *Id.* On July 12, 2019, after the trustee made "a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate[,]" he filed a Report of No Distribution.[2] *Id.*

Four days later, on July 16, Company filed a complaint seeking to deny dischargeability of Doe's debt to Company under 11 U.S.C. § 727(a). *Id.* On July 18, the bankruptcy trustee withdrew the Report of No Distribution filed on July 12 to conduct further investigation into Doe's financial status due to Company's commencement of the adversary proceeding. *Id.* Then, discovery regarding this proceeding was conducted, and Doe cooperated by and through counsel by completing interrogatories, exchanging personal and business financial documents, and participating in a deposition in January 2020. *Id.* at 3–4. On March 12, 2021, the bankruptcy court granted another creditor's Motion for Relief from Stay to repossess Doe's 2014 Toyota Camry; in June 2021, the vehicle was removed from Doe's possession. *Id.* at 4. On May 3, 2021,

[2] In bankruptcy proceedings, a trustee's Report of No Distribution serves to inform parties and the court that the estate has been fully administered and the debtor(s) will not pay money to creditor(s). *See* 11 U.S.C. § 350(a).

the bankruptcy filed another Report of No Distribution after making another diligent inquiry into Doe's financial affairs, finding that none of Doe's properties were available for distribution from the bankruptcy estate. *Id.*

On October 27 and 28, 2021, a trial on the merits was held at the bankruptcy court to find whether Doe should be denied discharge of debts under 11 U.S.C. § 727(a)(2) and (4). ECF 4, at 3; ECF 5, at 4. At trial, Company tried to show that Doe failed to disclose that his income was allegedly $159,012, roughly four times what he said he was earning; that he used "aliases" to avoid paying his debts; and that he improperly represented his interest in his business, MS&R. ECF 4, at 10−11; ECF 4-1, at 195, 198, 200. The bankruptcy court believed Doe's explanations for the sums and interests referred to by Company and found that Doe's weekly paychecks from MS&R were his only source of income. ECF 4-1, at 231. In doing so, the bankruptcy court concluded that Company failed to prove by the preponderance of the evidence its allegations that Doe failed under oath to disclose large sums of money or assets to the trustee or that Doe comingled his assets with those of his business. ECF 4, at 11; ECF 4-1, at 231; ECF 5, at 12.

At trial, the bankruptcy court also believed Doe's testimony about needing to use a single bank account, his wife's, to pay the joint living expenses of his multi-generational household and found him to be a credible witness. ECF 4-1, at 231−32. It determined that making alternate arrangements in this way to pay joint family expenses from a single account due to garnishment "simply did not amount to the sort of misconduct that would warrant denial of discharge . . . ." *Id.* at 232. Accordingly, the bankruptcy court concluded that all relief Company sought would be denied with prejudice and that Doe's debts to Company listed in his Chapter 7 bankruptcy proceeding would be discharged. ECF 4, at 3; ECF 4-1, at 231; ECF 5, at 4. Now pending before the Court is Company's appeal from the bankruptcy court's decision.

II. STANDARD OF REVIEW

This Court has jurisdiction over appeals from the United States Bankruptcy Court for the District of Maryland. *See* 28 U.S.C. § 158(c)(2) (stating that bankruptcy appeals "shall be taken in the same manner as appeals in civil proceedings generally are taken to courts of appeals from the district courts. . . ."); *see also In re Howes*, 563 B.R. 794, 804 (D. Md. 2016) (citing 28 U.S.C. § 158(c)(2)); *Conrad v. Schlossberg*, 555 B.R. 514, 515−16 (D. Md. 2016) (same); *Korman v. EagleBank*, No. PWG-12-3449, 2013 WL 3816987, at *2 (D. Md. July 22, 2013) (citing 28 U.S.C. § 158). It is well-settled that this Court "reviews the bankruptcy court's application of law to fact for abuse of discretion." *Modanlo v. Rose*, No. PWG-17-2544, 2019 WL 1299190, at *2 (D. Md. Mar. 20, 2019); *Korman*, 2013 WL 3816987, at *2; *see In re Rood*, 482 B.R. 132, 141 (D. Md. 2012), *aff'd sub nom. S. Mgmt. Corp. Ret. Tr. v. Rood*, 532 F. App'x 370 (4th Cir. 2013). This Court reviews bankruptcy courts' findings of fact under a "clear error" standard and conclusions of law de novo. *In re Howes*, 563 B.R. at 804; *Korman*, 2013 WL 3816987, at *2; *In re Taneja*, 743 F.3d 423, 429 (4th Cir. 2014). The clear error standard justifies a reversal of the bankruptcy court's order "when the record demonstrates convincingly to the reviewing court that 'a mistake has been committed.'" *In re Howes*, 563 B.R. at 804 (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525 (1948)); *see, e.g.*, *Andrews v. Am.'s Living Ctrs., LLC*, 827 F.3d 306, 312 (4th Cir. 2016).

III. DISCUSSION

The bankruptcy court denied Company's request to deny Doe discharge and granted Doe's discharge based on, *inter alia*, the conclusion that Doe did not intentionally make a fraudulent material statement under oath, *infra* Part III.B. It is Company's position that the bankruptcy court

erred in discharging Doe's debt because Doe intentionally made a fraudulent statement under oath. For the following reasons, the Court affirms the bankruptcy court's judgment.

A. Denial of Discharge Pursuant to 11 U.S.C. § 727(a)(4)

Company argues that the bankruptcy court erred when it granted Doe's discharge under § 727(a)(4), which provides an additional basis for denying a discharge:

> (a) The court shall grant the debtor a discharge, unless--
>
> (4) the debtor knowingly and fraudulently, in or in connection with the case--
>
> (A) made a false oath of account;
>
> (B) presented or used a false claim;
>
> (C) gave, offered, received, or attempted to obtain money, property, or advantage, for acting or forbearing to act; or
>
> (D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs[.]

11 U.S.C. § 727(a)(4).

This Court and the Fourth Circuit have provided that, to succeed on an objection to discharge under § 727(a)(4)(A), the objecting party must prove by a preponderance of the evidence that (1) the debtor made a statement under oath; (2) the statement was false; (3) the debtor knew it was false, (4) the debtor made the statement willfully and with the intent to defraud; and (5) the statement materially related to the bankruptcy case.[3] *See Trustee v. Sieber (In re Sieber)*, 389 B.R. 531, 554 (D. Md. 2013) (citing *Sheehan v. Stout (In re Stout)*, 348 B.R. 61, 64 (Bankr. N.D. W.

[3] The minimum threshold for materiality is met when a debtor's misstatement has "the potential to prejudice the rights of creditors." *Nelson v. Jackson*, No. ELH-18-2473, 2019 WL 3081215, at *12 (D. Md. July 12, 2019) (citing *Robinson v. Worley*, 849 F.3d 577, 587 (4th Cir. 2017)). "[A] misstatement is material if it is 'relevant to the debtor's business transactions, estate and assets.'" 849 F.3d at 587 (quoting *Farouki v. Emirates Bank Int'l, Ltd.*, 14 F.3d 244, 251 (4th Cir. 1994)).

Va. 2006)); *Williamson v. Fireman's Fund Ins.*, 828 F.2d 249, 251−52 (4th Cir. 1987) (noting that, when denying a debtor discharge under § 727(a)(4), "the debtor must have made a statement under oath which he knew to be false, and he must have made the statement willfully, with intent to defraud").[4] The question of whether a debtor has made a false oath is one of fact, and a district court may not set aside a bankruptcy court's factual findings unless they are clearly erroneous. *Nelson v. Jackson*, No. ELH-18-2473, 2019 WL 3081215, at *11 (D. Md. July 12, 2019) (citing *Williamson*, 828 F.2d at 251).

When, as here, intent is an element of the law applied by the bankruptcy court, because a debtor acting with fraudulent intent is unlikely to admit that they did so, fraudulent intent may be established in either of two ways: (1) "by circumstantial evidence or by inference drawn from a course of conduct[;]" or (2) by establishing the debtor demonstrated a "reckless indifference to the truth," which "constitutes the 'functional equivalent of fraud.'" *In re Sieber*, 489 B.R. at 554 (citing *Williamson.*, 828 F.2d at 252); *Lafarge N.A., Inc. v. Poffenberger (In re Poffenberger)*, 471 B.R. 807, 819 (D. Md. 2012) (same); *see Pumphrey v. Neese*, No. AW-10-3215, 2011 WL 1627163, at *2 (D. Md. Apr. 27, 2011). Additionally, if the debtor's "false statement is due to mere mistake or inadvertence[,]" the debtor will not be denied a discharge. *In re Sieber*, 489 B.R. at 554 (quoting *Gullickson v. Brown (In re Brown)*, 108 F.3d 1290, 1294−95 (10th Cir. 1997)). Importantly, because "a determination concerning fraudulent intent [under § 727(a)(4)(A)] depends largely upon an assessment of the credibility and demeanor of the debtor[,]" deference should be given to a bankruptcy court on findings of intent. *Id.* (citing *Mercantile Peninsula Bank v. French (In re French)*, 499 F.3d 345, 352 (4th Cir. 2007)); *Williamson*, 828 F.2d at 252;

[4] The purpose of denying a discharge to a debtor under this false oath exception is to make sure that "'those who play fast and loose with their assets' do not profit from the liberating shelter of the Bankruptcy Code." *Robinson*, 849 F.3d at 583 (quoting *Williamson*, 828 F.2d at 251).

Korman, 2013 WL 3816987, at *2 (citing *Simone v. Donahoo*, No. GLR-12-1143, 2013 WL 360389, at *4−5 (D. Md. Jan. 29, 2013); *Boyuka v. White (In re White)*, 128 F. App'x 994, 999 (4th Cir. 2005) (unpublished)). Thus, "[s]o long as the bankruptcy court's account of evidence is plausible, the district court may not reverse the decision simply because it would have weighed the evidence differently[,]" and "[i]f there are 'two permissible views of evidence, the factfinder's choice between them cannot be clearly erroneous.'" *Korman*, 2013 WL 3816987, at *2 (citing *Simone*, 2013 WL 360389, at *2; *McGahren v. First Citizens Bank & Trust Co. (In re Weiss)*, 111 F.3d 1159, 1166 (4th Cir. 1997)). A mistakenly made false statement "is not a sufficient ground upon which to base the denial of discharge[,]" *Nelson*, 2019 WL 3081215, at *12 (quoting *Robinson v. Worley*, 849 F.3d 577, 585 (4th Cir. 2017)). To act with the requisite intent to deceive, a debtor must make a statement that is "incompatible with his own knowledge." *Id.* (citing *Robinson*, 849 F.3d at 585) (quoting *Saslow v. Michael (In re Michael)*, 452 B.R. 908, 919 (Bankr. M.D.N.C. 2011)).

The bankruptcy court found that Company failed to show, by the preponderance of evidence, that any false or inaccurate statements Doe made were made with the requisite intent to deny a debtor discharge under this provision. ECF 4-1, at 230−32. Company argues that the bankruptcy court erred in discharging Doe's debt because he made false statements including regarding his assets, "aliases," and ownership interest in his business. ECF 4, at 10−11.

The Court finds the bankruptcy court's determination that any statements Doe made were not made with the requisite intent to defraud is not clearly erroneous. Because "a determination concerning fraudulent intent . . . depends largely upon an assessment of the credibility and demeanor of the debtor[,]" deference should be given to a bankruptcy court on findings of intent. *In re Sieber*, 489 B.R. at 554 (citing *In re French*, 499 F.3d at 352; *Williamson*, 828 F.2d at 252);

Korman, 2013 WL 3816987, at *2 (citing *Simone*, 2013 WL 360389, at *4–5; *In re White*, 128 F. App'x at 999). Though Doe's initial petition and schedule filings included some inaccuracies, Doe addressed all requests made by the Chapter 7 trustee and properly amended the errors. ECF 4-1, at 231. The bankruptcy court also found that Doe had no source of income other than the paychecks from MS&R and believed his testimony about the multigenerational living arrangements that warranted using a single bank account to pay joint family expenses and, thus, that he made no false oath about his assets. *Id.* Put simply, the bankruptcy court believed Doe and found him to be a credible witness. *Id.* The Court finds the bankruptcy court's account of evidence to be plausible and, therefore, it would be inappropriate to reverse the bankruptcy court's decision simply because it could have viewed the evidence a different way. *Korman*, 2013 WL 3816987, at *2 (citing *Simone*, 2013 WL 360389, at *2; *In re Weiss*, 111 F.3d at 1166).

Upon reviewing the bankruptcy court's conclusions de novo, the Court finds that the bankruptcy court did not err in concluding Company did not prove by a preponderance of evidence that Doe made a false statement under oath, knowingly and with the intent to defraud, regarding a material matter. In *Nelson v. Jackson*, the bankruptcy court found the debtor "failed to amend his disclosures even after the court and the trustee had advised." No. ELH-18-2473, 2019 WL 3081215, at *12 (D. Md. July 2019). In doing so, the bankruptcy court concluded that the debtor displayed a reckless indifference to the truth, and this Court affirmed. *Id.* Contrastingly, Doe abided by the Chapter 7 trustee's instructions, amended his errors, and provided additional required information. ECF 4-1, at 231; ECF 5, at 2. The facts in this case are more analogous to those in *In re Poffenberger*, where the debtor filed amended schedules with ample time for the trustee to investigate after inconsistencies and omissions were uncovered in debtor's initial filings. 471 B.R. at 820–21 (finding creditor's evidence insufficient to establish that debtor should be denied

discharge under § 727(a)(4)). Similarly, in making an honest mistake that he followed instructions to rectify, Doe did not demonstrate a pattern of reckless indifference to the truth and did not possess the requisite intent to defraud Company or the trustee. ECF 4-1, at 231; ECF 5, at 2.

Company also attempted to prove that Doe had assets which he failed, under oath, to disclose in the form of $159,012 worth of unreported income, approximately four times the amount he said he was earning. ECF 4-1, at 200. This case is not like *In re Sieber* where the debtor "knowingly and fraudulently made false oaths and accounts on his Monthly Operating Reports by failing to disclose monies he received[.]" 489 B.R. at 556. In this case, Company did not prove, by a preponderance of the evidence, that this sum was income from either Doe's father or MS&R. ECF 4-1, at 231. Even if it were income, there is no evidence that Doe willfully made a misstatement of his income knowing it was false with the intent to defraud. Accordingly, the bankruptcy court appropriately found that Doe's only income was the weekly checks of approximately $700 from MS&R and, thus, that he did not fraudulently conceal assets. *Id.* at 204−05. Accordingly, the discharge of Doe's debt under § 727(a)(4) is affirmed.

Applicant Details

First Name	**Alezeh**
Last Name	**Rauf**
Citizenship Status	**U. S. Citizen**
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Address	**Address** Street **3720 Chestnut St. Apt 911** City **Philadelphia** State/Territory **Pennsylvania** Zip **19104** Country **United States**
Contact Phone Number	**713-417-9788**

Applicant Education

BA/BS From	**Wellesley College**
Date of BA/BS	**June 2018**
JD/LLB From	**University of Pennsylvania Carey Law School** **https://www.law.upenn.edu/careers/**
Date of JD/LLB	**May 16, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**University of Pennsylvania Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Wolff, Tobias
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Alezeh Rauf
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April 6, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I am writing to request your consideration of my application for a clerkship beginning in Fall 2024. I am a third-year law student at the University of Pennsylvania Law School and will begin as an associate at Covington & Burling, LLP in Washington, D.C. this Fall 2023.

My interest in law and effective advocacy began at a young age with a desire to advocate for my immigrant community and has continued throughout my experiences prior to and during law school. During law school, I have sought opportunities to develop strong legal research, writing, and analysis skills. I am currently interning with Judge Christopher Cooper on the District of D.C., gaining insight into judicial decision-making and experience drafting bench memoranda and opinions. I am eager for the chance to gain further experience at the district court level.

Previously, I also externed at DOJ Criminal Appellate Section, drafting adverse decision memoranda and briefs as well as gaining exposure to a wide array of criminal law issues. Throughout my experiences, I have focused on thorough research, conciseness and clarity in writing, attention to detail, and oral communication. I am eager to apply my skills in a clerkship with your chambers, and for the chance to learn from and contribute to your chambers.

I enclose my resume, transcript, and writing sample. Letters of recommendation from Professor Tobias Wolff (twolff@law.upenn.edu, 215-898-7471), Professor Herbert Hovenkamp (hhovenka@law.upenn.edu, 215-573-6018), Professor Brett Sweitzer (Brett_Sweitzer@fd.org, 215-928-1100), and Patricia Jerjian, Esq. (pjerjian@ftc.gov, 202-326-3019) are also included in this packet. Please let me know if any other information would be useful. Thank you.

Respectfully,

Alezeh Z. Rauf

Encls.

Alezeh Rauf

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EDUCATION

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL Philadelphia, PA
J.D., *magna cum laude* May 2023

Honors: Order of the Coif
University of Pennsylvania Law Review, Senior Editor
Honors Designation in 1L Legal Practice Skills Course
Morgan Lewis Public Interest 1L Summer Fellowship
Dean's Scholarship

Activities: Civil Rights Law Project, Director (3L), Research Editor (2L)
Teaching Assistant, Antitrust, Professor Herbert Hovenkamp (3L Fall)
Research Assistant, Professor Herbert Hovenkamp (2L – 3L)
American Constitution Society, Co-President (2L)
South Asian Law Student Association, Internal Relations Chair (2L)
Muslim Law Student Association, Member

WELLESLEY COLLEGE Wellesley, MA
B.A. in International Relations-Political Science; Minor in Women's and Gender Studies June 2018

Honors: Pi Sigma Alpha (Political Science Department Honors)

Activities: The Agora Society, President
Political Science Department, Student Assistant
College Government, Executive Senator
Harvard Legal Aid Bureau, Intern

EXPERIENCE

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA Washington, DC
Legal Intern for Judge Christopher Cooper January – May 2023

DEPARTMENT OF JUSTICE, CRIMINAL APPELLATE SECTION Washington, DC
Legal Intern September – December 2022
Drafted adverse decision memoranda regarding questions of consent prior to a warrantless search, reasonable suspicion prior to stop-and-frisks or prolonged traffic stops, and the public trial right. Drafted an opposition to a certiorari petition regarding a First Step Act sentencing issue, and a motion to dismiss response regarding a First Amendment defense. Researched and analyzed potential arguments in a Second Amendment case, and summarized research regarding statutory interpretation.

COVINGTON & BURLING LLP Washington, DC
Summer Associate May – July 2022
Surveyed and summarized state privacy laws, and FTC and DOJ merger enforcement trends. Conducted legal research and drafted memoranda on federal antitrust law treatment of non-compete clauses, constitutional limits on statutory class action damages awards, and Louisiana state law regarding the right of privacy. Attended client meetings, presentations, and interviews, and participated in a mock deposition and negotiation.

FEDERAL TRADE COMMISSION, BUREAU OF COMPETITION Washington, DC
Anticompetitive Practices Division Legal Intern September – December 2021
Conducted legal research and drafted memoranda on issues such as state antitrust law treatment of non-compete clauses, federal antitrust law treatment of franchisor-franchisee relationships and contract provisions, and third-party privilege waiver exemptions in the Second Circuit. Summarized public comments and recommended markets for potential investigation of anticompetitive behavior. Drafted interview reports.

ACLU OF PENNYSLVANIA Philadelphia, PA
Legal Intern May – July 2021
Conducted legal research and drafted memoranda for ongoing and potential cases, including best arguments for imposing a statute of limitations for collecting criminal debt in Pennsylvania and attorneys' fees awards for partial victories under § 1983. Participated in office-wide and team-specific strategy meetings, summarized discovery documents and oral arguments, and cite-checked briefs.

DAVIS POLK & WARDWELL LLP Washington, DC
Legal Assistant May 2019 – June 2020
Assisted attorneys with antitrust and white-collar cases. Conducted extensive research, drafted one-pagers, and prepared for responses to FTC initial and second requests for a large investigation. Conducted preliminary market research and prepared summaries in anticipation of potential mergers in the pharmaceuticals, oil and gas, and food industries. Drafted memoranda for depositions and interviews, created case database trackers, and produced DOJ, FTC, and SEC filings.

TERRIS PRAVLIK & MILLIAN LLP Washington, DC
Legal Assistant June 2018 – May 2019
Aided Medicaid beneficiaries by coordinating case management, drafting grievances in instances of abuse, and assisting with recertification. Researched and presented potential environmental casework, cite-checked, and assisted with attorneys' fees applications and FOIA requests.

OFFICE OF THE ATTORNEY GENERAL OF MASSACHUSETTS Boston, MA
Civil Rights Division Intern June – August 2017
Closed over 90 civil rights discrimination intake cases through e-complaints, phone calls, and walk-ins. Investigated and escalated relevant cases to attorneys when necessary. Participated in an "ICE in Courthouses" working group to determine potential office action and drafted relevant memorandum.

COMMENT

Abstaining from Abstention: Why *Younger* Abstention Does Not Apply in 42 U.S.C. § 1983 Bail Litigation, 171 U. PA. L. REV. 535 (2023)

INTERESTS

Hiking, climbing, Catan, Rummikub, March Madness brackets, volunteering with Girls on the Run.

Alezeh Rauf

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL TRANSCRIPT

Order of the Coif & Magna Cum Laude.
The University of Pennsylvania Carey Law School does not calculate GPA.

Spring 2023

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Evidence	Rudovsky	A	4	
Writing for Practice	Gowen	A	2	
Ad-Hoc Externship	Barrett	CR	4	D.D.C. Judicial Externship; Credit

Fall 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Professional Responsibility	Finkelstein	A	2	
Advanced Writing: Federal Litigation	Rinaldi	A	2	
First Amendment	Wolff	A-	3	
Constitutional Criminal Procedure	Rudovsky	A	3	
Ad-Hoc Externship	Shore	CR	5	DOJ Externship; Credit

Spring 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Federal Courts	Struve	A	4	
Reproductive Rights and Justice	Roberts	A	3	
Private Action: Antitrust, RICO, and Class Action	Langer/Leckman	A	3	
Policy Lab: AI and Implicit Bias	de Silva de Alwis	A	2	
Research Assistant	Hovenkamp	A	2	
Independent Study	Kreimer	CR	1	Comment supervision; Credit
Law Review – Associate Editor	N/A	CR	0	Credit

Fall 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Antitrust	Hovenkamp	A	3	
Appellate Advocacy	Sweitzer	A	3	
Advanced Problems in Federal Procedure	Struve/Scirica	A-	3	
Ad Hoc Externship	Lee	CR	5	FTC externship; Credit
Law Review – Associate Editor	N/A	CR	1	Credit

Spring 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Kreimer	A-	4	
Torts	Baker	A	4	
Law and Inequality	Tani/Ossei-Owusu	A	3	
Administrative Law	Lee	A-	3	
Legal Practice Skills Cohort	Weiss	CR	0	Credit
Legal Practice Skills	Gowen	H	2	Honors

Fall 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Wolff	A	4	
Contracts	Wagner	B+	4	
Criminal Law	Mayson	A-	4	
Legal Practice Skills Cohort	Weiss	CR	0	Credit
Legal Practice Skills	Gowen	H	4	Honors

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

April 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Alezeh Rauf

Dear Judge Walker:

Alezeh Rauf is a star: super smart, sophisticated, excited about learning, and mature in her professional sensibilities. Only a small group of students each year operate on such a high level from the very beginning of their legal education and it is a privilege to work with them. Alezeh is one of those exceptional talents. It is my pleasure to lend my name to Alezeh's application for a judicial clerkship. She has earned my enthusiastic and unqualified endorsement.

Alezeh was my student in Civil Procedure during her first semester of law school in fall 2020, that difficult period of the pandemic when classes were remote and students were navigating unprecedented difficulties. I taught two sections of Procedure that semester and my students rose to the challenge in a remarkable fashion. Collectively, they may have done the best work of any group of new 1Ls I have taught. Even in that singular setting, Alezeh stood out. Both in her judicious contributions to classroom discussion and our regular meetings during office hours, she brought precision and incisive intelligence to the difficult and unfamiliar materials of the Civil Procedure course. She operated at that high level throughout the entire semester and it was no surprise when she received one of the top scores on the exam. Her triumphant performance in subsequent semesters simply confirms that she is a natural.

Alezeh worked with me again in the upper-level First Amendment class in fall 2022 and she continued to offer the same level of excellence. Free speech doctrine is the classic example of the airplane that one needs to learn how to fly while still constructing it — every part of the doctrine is interconnected and students must have the patience and intellectual clarity to learn incomplete components of that edifice until they know enough to master the whole. It is a particularly challenging course and Alezeh did consistently great work, approaching the materials methodically and developing true expertise. Her grade of A- reflected a very strong performance.

Underlying all that intellectual ability is a person of character and conviction. The goodness of spirit that Alezeh brings to her work is remarkable. She combines an unassuming manner with a clarity of focus that far exceeds her years. There is no wasted effort navigating around ego, neither are there barriers of insecurity to surmount. Alezeh simply applies herself to the task and does great work. To be honest, I am not sure that Alezeh appreciates just how talented she is. It is clear that she takes none of her accomplishments for granted; rather, there is a striving quality about her work ethic, a sense that she feels a continuing need to prove herself. It is my hope that Alezeh will become more and more comfortable with her place in the profession as she finishes her work at Penn and launches her career, because she has unquestionably earned that sense of assurance. This is a remarkable young professional.

As is probably obvious, I like Alezeh a great deal. She allows her excitement in the work to shine through as she builds a professional relationship, and the look of wonder she sometimes displays when grappling with ideas is joyful. Alezeh has been working in the fields of law and public policy since she was a college student and the gravitas of that calling is something she feels in her bones. Yet she is not over-serious, bringing an easy smile and a kind sensibility to every conversation. She would introduce light and goodness into any chambers and a powerful, focused mind to supporting the work of any judge fortunate enough to secure her services as a clerk. Alezeh is a no-risk applicant and a wonderful person. I give her my strong, warm and unqualified recommendation.

Please do not hesitate to get in touch if I can be of any further assistance in your review of Alezeh's candidacy. I can be reached most easily on my cell phone at 415-260-3290 or by email at twolff@law.upenn.edu.

Very truly yours,

Tobias Barrington Wolff
Jefferson Barnes Fordham Professor of Law
Deputy Dean, Alumni Engagement and Inclusion
Tel.: 415.260.3290
Email: twolff@law.upenn.edu

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Patricia C. Jerjian
Anticompetitive Practices Division
Bureau of Competition
(202) 326-3019
pjerjian@ftc.gov

April 29, 2022

Sent by Email

Re: Alezeh Rauf Clerkship Application

To Whom It May Concern:

I write to provide my strongest recommendation for Alezeh Rauf's clerkship application. I was Alezeh's direct supervisor during her fall 2021 internship with the Anticompetitive Practices Division of the Federal Trade Commission's Bureau of Competition. Throughout her internship, Alezeh impressed me with her dedication, competence, and endless enthusiasm for complex legal work and public service. I am confident that she will be an outstanding attorney and an ideal clerk.

Alezeh reported directly to me throughout the semester, but she also worked with many other attorneys in our division. She participated in as many as three investigations at once, each pertaining to a different and uniquely complicated industry and potentially anticompetitive conduct. No matter how obscure the subject, Alezeh consistently showed a level of enthusiasm and assiduousness found only in our best interns. Whenever she was staffed on a new matter, she sought out additional background reading to understand where her assignments fit into the overall investigation. This practice not only showed her genuine desire to contribute meaningfully to each investigation, but also elevated the quality of her work. Despite having more than enough work to do in solitude, Alezeh also took the initiative to attend and actively assist the team during a full-day investigational hearing related to one of her investigations. While many interns would have understandably flagged after the morning half, Alezeh stayed actively engaged with the line of questioning and kept track of the witness' responses to key documents. As a result, Alezeh gained a more nuanced understanding of the investigation's principal issues while also helping her supervisors with her own initiative.

Alezeh impressed me with her adaptability and meticulous work, both written and oral. Each of her research assignments focused on starkly different legal issues. From simple to complicated legal questions, Alezeh brought the same care and attention to all of her work and delivered polished, well-researched answers without fail. However, where Alezeh truly impressed me was her ability to research *novel* legal theories that would pose a challenge to far more experienced attorneys. Alezeh took on this kind of assignment with an earnest desire to understand her supervisors' expectations and priorities. She provided updates on her progress, asked pertinent questions, and never shied away from asking for help from more experienced

attorneys on her team. All of this work on Alezeh's part came through in her oral presentations as well as her written research memoranda, which belied her status as a law student and became useful references for her teams many months after her departure.

By the end of the semester, several of my colleagues expressed regret about Alezeh's internship coming to a close and stated that they would miss her presence in their respective teams. She was always easy and pleasant to work with, not least because of her unabashed passion for the FTC's mission to protect competition and conduct thorough investigations with an open, inquisitive mind. Outside of her work, she attended weekly coffee meetings with various members of our division, discussing everything from their career paths to their hobbies. She treated everyone, regardless of their role at the Commission, with respect and consideration, and she even overcame the distance of remote work by developing a genuine rapport with many people in our division.

In sum, I believe Alezeh has all the skills, passion, and professionalism required to tackle challenging and varied work, and she would be a credit to any judge's chambers if selected for a clerkship.

If you have any additional questions, please do not hesitate to contact me at pjerjian@ftc.gov or (202) 326-3019.

Sincerely,

/s/ Patricia C. Jerjian
Patricia C. Jerjian
Attorney, Bureau of Competition

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

April 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Alezeh Rauf

Dear Judge Walker:

I am writing to recommend Alezeh Rauf for a clerkship in your chambers. Alezeh was a student in my Appellate Advocacy class during the Fall semester, 2021. The class is seminar style (eleven students that semester) and develops students' written and oral advocacy skills, utilizing two closed-research assignments. In the first, students are provided procedural facts and a body of case law and are asked to write an appellate motion brief addressing the timeliness of an appeal. In the second, students are provided a complete trial-court record and a body of case law and are asked to write an appellate merits brief. The students present oral argument in both assignments.

Alezeh excelled in the class, earning a grade of A. In fact, she was among the very top performers as I awarded only three A's that semester. I am considered a tough grader, particularly for those teaching skills-oriented classes. I have high expectations for the talented students at Penn Law, and reserve the highest grade for excellent work above those expectations. Alezeh met that standard. Two things stood out. First, the quality of Alezeh's written work was significantly above what I typically see not just from students, but from junior practitioners in the federal appellate courts. (In addition to teaching Appellate Advocacy at Penn, I am the Chief of Appeals at the Federal Community Defender Office for the Eastern District of Pennsylvania.) Her reasoning is rock solid and her writing efficient, well organized, and clear. That cannot be said of all law students, even high-performing ones. Second, I was truly impressed with the tangible progress Alezeh showed over the course of the semester. Improving one's writing and oral advocacy takes time, and I typically see only incremental progress from students during a single semester—especially with students such as Alezeh, who start strong. Alezeh was able to incorporate feedback and quickly take her skills to the next level. That is something I value in those I supervise as a practitioner, and I would think it is a valuable quality in a law clerk, as well.

Perhaps equally important, I found Alezeh to be quite personable. She was receptive to critical feedback, and was neither defensive nor timid in explaining her thought processes. She interacted well with me and others in the class, and I imagine would fit in well in the environment of a judicial chambers. I believe Alezeh would make an outstanding law clerk, and recommend her without hesitation. Please feel free to contact me if you would like to discuss her qualifications further.

Very truly yours,

Brett G. Sweitzer
Lecturer in Law, University of Pennsylvania Law School
Chief of Appeals, Federal Community Defender Office
for the Eastern District of Pennsylvania
Brett_Sweitzer@fd.org

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

April 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Alezeh Rauf

Dear Judge Walker:

This is a letter of recommendation for Alezeh Rauf, who has applied for a clerkship in your court. Alezeh is currently finishing her 3L year at the University of Pennsylvania Law Carey School. She took antitrust from me in the Fall, 2021, and earned an A.

Alezeh is an excellent and well spoken student. I got to know her virtually, when Upenn was still on Covid “lockdown” and conducting all of our business remotely. Based on those interactions I hired her to be my Research Assistant, and then this past fall she took my antitrust course.

As a research assistant Alezeh has been superior in every suspect. I came to rely on her heavily for my most serious work, which is publication of the Antitrust Law treatise. Most of her work consisted of reading and cite checking manuscripts, and also doing research in response to specific questions that I had, and among both case law and secondary sources. I can honestly say that I have never had an R.A. who turned her work around as promptly as Alezeh, and it was always excellent. I also asked her to proof and cite check two articles, and she did equally well there.

Recently I asked Alezeh to be my teaching assistant in my fall antitrust course for the coming autumn term (2022). For that she will do a fair amount of administrative work, but I also plan on her doing several review sessions.

In sum, Alezeh is as competent and confident a law student as I have had, and I give her my highest recommendation. I am sure that she will make an excellent clerk.

Sincerely,

Herbert Hovenkamp
James G. Dinan University Professor
Univ. of Pennsylvania School of Law and
The Wharton School
PH: 319-512-9579 (M)
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Alezeh Rauf

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WRITING SAMPLE

I drafted this writing sample as an assignment in my Advanced Writing for Federal Litigation class in Fall 2022. The class was provided with a closed record and instructed to draft an opposition to the defendants' motion for summary judgment. I conducted all research myself and this version is completely unedited by others. It reflects only my own work.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE AT GREENVILLE

BRANDON GULLEY, Plaintiff, v. MATT WEBB, JASON MURPHY, BOBBY THORPE, JOHN DOE I AND HAMBLEN COUNTY Defendant.	)	**Case No. X-cv-XXX** **JURY DEMANDED**

MEMORANDUM IN SUPPORT OF RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This case is about the brutal beating of a prisoner after he had been restrained following an incident in his cell. Brandon Gulley pled guilty to attempted escape and aggravated assault of two officers in an incident that occurred on May 12, 2009. This is not in dispute. However, what defendants here are attempting to foreclose is the excessive force that occurred *after* the incident. Once the officers had placed Gulley in restraints, they proceeded to beat him unconscious over and over again, using tasers to wake him up each time. The officers jumped on his ribcage, slammed his head into the wall, punched him in the head, shoved his head into a toilet, and threw his body against the door. Through all this, Gulley remained in restraints, unable to do anything but succumb to the torture.

Defendants' motion for summary judgment rests solely on their argument that *Heck v. Humphrey*, 512 U.S. 477 (1994) bars Plaintiff's claims because of his prior conviction. However, if a criminal conviction based on prior conduct barred an excessive force claim, then no prisoner would ever be able to bring such a claim. Defendants thus fundamentally misapply *Heck*. *Heck* and Sixth Circuit precedent hold that where a plaintiff challenges the constitutionality of events

that "necessarily" imply the validity of a conviction, *Heck* may bar their claims. *Heck*, 512 U.S. at 487; *see also Schreiber v. Moe*, 596 F.3d 323, 334 (6th Cir. 2010). But where a plaintiff brings an excessive force claim for events that occurred *after* those implicating his conviction, the validity of the conviction is not challenged, and *Heck* does not apply. *Swiecicki v. Delgado*, 463 F.3d 489, 494-95 (6th Cir. 2006); *see also Heck*, 512 U.S. at 487 ("[I]f the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed."). Because Gulley challenges the officers' actions that occurred after the events that yielded his conviction, *Heck* does not bar his claims. Rather, genuine issues of material fact exist regarding the conduct that Gulley is challenging and Defendants' motion for summary judgment should be denied.

FACTUAL BACKGROUND

Gulley's Initial Assault of Two Officers and Guilty Plea

On May 12, 2009, Defendant Officers Matt Webb and Jason Murphy entered the cell of Gulley, who was incarcerated in the Hamblen County Detention Facility. (Dec. ¶ 3; Affidavit of Complaint, Doc. 11-1, at 1). Gulley "caused a disturbance in the cell block, refused to comply with the Defendants' orders, struck at them with a mop handle, and attempted to escape." (Def. Mot., Doc. 12, at 2). Defendants then restrained Gulley, who was unable to move. (Dec ¶ 3-4). Gulley pled guilty to aggravated assault on the two officers and attempted escape. (Dec. ¶ 3; Affidavit of Complaint, Doc. 11-2).

Defendants' Subsequent Brutal Beating of Gulley

After the officers placed Gulley in restraints, they beat him until he was unconscious. (Dec. ¶ 4). One officer jumped on Gulley's ribcage, causing injury. (Dec. ¶ 5). The officers then

tasered Gulley, bringing him back to consciousness. (Dec. ¶ 4). After Gulley was awake, the officers continued to torturously taser Gulley. (Dec. ¶ 5). Officer Webb then picked up Gulley, slammed him into the cage door, and put his head into a toilet. (Dec. ¶ 5). The officers beat Gulley unconscious at least two more times, using the taser to wake him up each time. (Dec. ¶ 6). Gulley remained in restraints throughout the duration of this torture. (Dec. ¶ 4-6).

The officers then escorted Gulley to be transported to the hospital. (Dec. ¶ 7). On the way to the vehicle, Officer Webb slammed Gulley's head into the wall, purportedly for not answering a question. (Dec. ¶ 7). Once Gulley had been placed into the vehicle, Officer Webb then punched Gulley in the head and said, "one for the road, bitch." (Dec. ¶ 8).

Upon Gulley's return to the jail, the officers did not allow him to clean the blood or excrement from his person. (Dec. ¶ 9). At all times material to these events, Defendants acted under the pretense and color of the statutes, ordinances, customs, and usage of the State of Tennessee.

STANDARD OF REVIEW

Summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears the burden of conclusively showing that the evidence is not "such that a reasonable jury could return a verdict for the non-moving party." *Jackson v. VHS Detroit Receiving Hosp., Inc.*, 814 F3d 769, 755 (6th Cir. 2016) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). When evaluating a motion for summary judgment, a court must view the evidence "in the light most favorable to the party opposing the motion." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). This includes drawing "all justifiable inferences" in the nonmoving party's favor. *Anderson*, 477 U.S. at 255.

Plaintiff has adequately done so here such that a reasonable jury could find for him. Therefore, Defendants have failed to prove they are entitled to judgment as a matter of law, and this Court should deny Defendants' motion for summary judgment.

ARGUMENT

I. *HECK V. HUMPHREY* DOES NOT PRECLUDE PLAINTIFF'S CLAIMS

Defendants' motion for summary judgment rests solely on their argument that *Heck v. Humphrey*, 512 U.S. 477 (1994) bars Plaintiff's claims. However, it does not.

In *Heck*, the petitioner had been convicted of voluntary manslaughter in state court and had filed a § 1983 claim challenging actions by the prosecutors and investigators involved in his case that led to his arrest, the destruction of exculpatory evidence, and an unlawful procedure at his trial. 512 U.S. at 479. Heck was therefore challenging the constitutionality of the very events that comprised his conviction. *Id.* The Court held that to bring a § 1983 claim "for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid," a plaintiff must prove that their conviction has been invalidated. *Id.* at 486. However, the holding was limited to only those actions that "necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement." *Id.* Where a plaintiff's action, "even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed." *Id.* at 486-87.

Here, unlike in *Heck*, a judgment in favor of Gulley would not implicate the validity of his conviction. The events comprising Gulley's excessive force claim occurred *after* the facts that made up his aggravated assault and attempted escape conviction. His excessive force claim entirely consists of the officers' actions after they had already restrained Gulley. Gulley is

therefore not challenging the facts underlying his conviction. If this court found for Gulley, his conviction would still stand and would not "demonstrate the invalidity of any outstanding criminal judgment against the plaintiff." *Heck*, 512 U.S. at 486-87.

The Sixth Circuit has spoken directly to this distinction. In *Schreiber*, the court reversed the district court's grant of summary judgment to defendants, holding that plaintiff's § 1983 excessive force claim was not barred by *Heck*. *Schreiber*, 596 F.3d at 334. The plaintiff had been convicted of resisting arrest and had then challenged the officer's actions leading up to and surrounding his arrest. *Id.* The court held that "[t]he mere fact that the conviction and the § 1983 claim arise from the same set of facts is irrelevant if the two are consistent with one another." *Id.* In fact, generally an excessive force claim does not "relate to the validity of the underlying conviction and therefore may be immediately cognizable." *Id.* (quoting *Swiecicki v. Delgado*, 463 F.3d 489, 493 (6th Cir. 2006)). There are only two exceptions to this: when "the criminal provision makes the lack of excessive force an element of the crime," or when "excessive force is an affirmative defense to the crime." *Id.* In both scenarios, "the § 1983 suit seeks a determination of a fact that, if true, would have precluded the conviction." *Id. Heck* did not bar the plaintiff's excessive force claim because it did not necessarily implicate the validity of his conviction for resisting arrest. *Id.* at 335; *see also Swiecicki*, 463 F.3d at 494-95 ("[A]ny § 1983 claims based on [excessive] force applied after the suspect began resisting arrest would not be barred by *Heck*, as the success of the § 1983 claim as to that force would not negate any element of the crime of resisting arrest and, therefore, would not necessarily imply the invalidity of the conviction.").

In fact, even where the factual basis of a plaintiff's guilty plea is unclear, the Sixth Circuit has assumed that the facts do not "necessarily" conflict with the plaintiff's § 1983 claim.

See Lucier v. City of Ecorse, 601 Fed. App'x 372, 377 (6th Cir. 2015). Therefore, the predicate term is "necessarily," and the Sixth Circuit has adopted a high bar to finding that an excessive force claim conflicts with an underlying conviction. *Id.* In *Lucier*, the plaintiff had brought a § 1983 claim based on officers' actions while arresting him. *Id.* at 373. The defendants argued that *Heck* barred his claim because "the factual account relied on by Plaintiff impermissibly contradicts Plaintiff's previous guilty plea to resisting arrest." *Id.* However, the court held that because the factual basis of the plaintiff's guilty plea had never been specified, the plaintiff's excessive force claim did not "necessarily contradict or imply the invalidity of Plaintiff's underlying resisting arrest plea" and was not barred by *Heck*. *Id.* at 377.

Therefore, where, as here, the excessive force claim is challenging events that occurred after the events comprising a conviction, the claim does not "necessarily" implicate the validity of the prior conviction. Unlike in *Schreiber*, "the conviction and the § 1983 claim" do *not* "arise from the same set of facts." 596 F.3d at 334. But rather, Gulley's conviction arises from one undisputed set of facts and his § 1983 claim arises from another, temporally distinct and disputed, set of facts. The situation here is even clearer than it was in *Lucier*, where the Sixth Circuit was unwilling to bar the plaintiff's claim absent a definitive showing that the facts underlying the plaintiff's excessive force claim "necessarily contradict[ed]" the facts underlying his guilty plea. *Lucier*, 601 Fed. App'x at 377. Additionally, neither of the two exceptions outlined in *Schreiber* apply. It is irrelevant whether the lack of excessive force is an element of or an affirmative defense to Gulley's conviction because he is challenging temporally separate events. Therefore, *Heck* does not bar Gulley's claims.

This Court has also recognized that "*Heck* does not bar Plaintiff's § 1983 claims to the extend they are based on alleged excessive force applied subsequent to [the facts underlying the

conviction]." *Warner v. McMinn County*, No. 04-cv-399, 2007 WL 3020510, at *11 (E.D. Tenn. Oct. 11, 2007); *cf. Cook v. McPherson*, No. 05-cv-136, 2007 WL 1004606, at *5 (E.D. Tenn. Mar. 30, 2007) ("[I]n light of a conviction for resisting arrest in Tennessee… *Heck* bars a plaintiff's § 1983 excessive force claim to the extent that the claim is based on excessive force that occurred *before* the plaintiff began to resist arrest."). Therefore, the doctrine is clear: *Heck* does not bar an excessive force claim based on facts subsequent to those underlying a conviction. Gulley's claim should proceed and defendants' motion for summary judgment should be denied.

II. THE CASES DEFENDANTS RELY ON DO NOT BAR PLAINTIFF'S CLAIMS

Defendants rely on three Sixth Circuit cases. Yet, none are analogous to the facts at issue here and therefore have no bearing on Gulley's case. All three cases concern a § 1983 challenge to the very facts that comprise the plaintiff's conviction. As explained above, Gulley here is challenging conduct that occurred *after* the facts that made up his conviction.

First, Defendants rely on *Schilling v. White*, 58 F.3d 1081 (6th Cir. 1995), which does not discuss the unique treatment of excessive force claims under *Heck* nor treatment of cases where the facts underlying the § 1983 suit occur *after* the facts underlying the conviction. In *Schilling*, the Sixth Circuit affirmed the district court's dismissal without prejudice of the plaintiff's § 1983 claims because he had "failed to show that his state conviction had been rendered invalid." *Id.* at 1082-83, 1087. The plaintiff had challenged the validity of the officers' search of his car and person leading to the discovery of drugs and the charge that he was driving under the influence of drugs. *Id.* at 1082-83. Therefore, the facts that led to the plaintiff's conviction are the very facts he challenged in his § 1983 claim. Thus, *Schilling* sheds no light on the scenario at issue here, where the facts underlying Gulley's § 1983 excessive force claim occurred after the facts that comprised his guilty plea.

The second case Defendants rely on, *Brown v. City of Detroit*, 47 Fed. Appx. 339 (6th Cir. 2002), similarly does not speak to Gulley's case. The plaintiff had brought a § 1983 suit alleging, in part, excessive force when an officer, Regina Allen, shot him in the arm prior to his arrest. *Id.* at 340. The Sixth Circuit affirmed the district court's grant of summary judgment in favor of the defendants, briefly explaining that: "A ruling in Brown's favor on his excessive use of force claim would undermine the validity of his conviction for assault with intent to murder [Officer] Allen." *Id.* at 341. Therefore, because his conviction had not been overturned or reversed, his § 1983 excessive use of force claim regarding the very events that made up his conviction could not be maintained. *Id.* Just as in *Schilling*, the plaintiff's claim in *Brown* comprised the very facts that made up his conviction, and thus does not bear on Gulley's case.

Finally, Defendants' third authority, *Ruiz v. Martin*, 72 Fed. Appx. 271 (6th Cir. 2003), again does not speak to Gulley's scenario. In *Ruiz*, the Sixth Circuit affirmed the district court's grant of summary judgment in favor of defendants on plaintiff's claims of excessive force under § 1983. *Id.* at 273. The court found that while *Heck* generally does not bar excessive force claims under the Eighth Amendment, it does so where the Eighth Amendment claim "rests solely on an allegation that a corrections officer falsified a misconduct report." *Id.* at 274. The court held that because the plaintiff's § 1983 rested on the very same facts that comprised defendant officer's misconduct report and "would necessarily require the invalidation of the hearing officer's assault judgment," *Heck* barred his claim. *Id.* Quite clearly and as explained above, the facts of Gulley's case are different: he is not challenging the facts that made up his conviction.

Defendants' arguments are unsupported and their motion for summary judgment should be denied.

CONCLUSION

For all the foregoing reasons, the defendants' motion for summary judgment should be denied.

Dated: Philadelphia, Pennsylvania
November 21, 2022

Respectfully submitted,

s/ Alezeh Rauf
Alezeh Rauf
University of Pennsylvania Law School
3501 Sansom Street
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Applicant Details

First Name	**Kyle**
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Contact Phone Number	**7276679246**

Applicant Education

BA/BS From	**University of North Florida**
Date of BA/BS	**December 2015**
JD/LLB From	**Indiana University Maurer School of Law** **http://www.law.indiana.edu**
Date of JD/LLB	**May 4, 2024**
Class Rank	**50%**
Law Review/Journal	**Yes**
Journal(s)	**Indiana Law Journal**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Sherman Minton Moot Court Competition** **Chicago Bar Association Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations	**American Constitution Society**

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

KYLE **REEVES**

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kylereev@iu.edu · 727-667-9246

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

June 17th, 2023

DEAR JUDGE WALKER,

I am a rising third-year law student at the Indiana University Maurer School of Law, and I am writing to apply for a clerkship in your chambers for 2024 Term.

Though my legal career is something of a second act for me, it is one to which I am passionately committed. During my time as an undergraduate, I had recently escaped from an abusive household and was still learning how to function independently as a queer young adult on the autism spectrum in a new city where I knew no one. This led to poor academic performance that I once feared would always hold me back. After a few years working for local environmental non-profits, however, I developed a passion for policy and the law that motivated me to take another chance on myself and pursue a legal education.

I'm happy to say that my gamble has paid off, and I've been able to achieve and experience things that I never would have thought possible as an undergraduate, things that I feel have prepared me for the challenges of this clerkship. Thus far in law school, I have gained valuable experience researching and writing on issues dear to me as they pertain to actual litigation in both state and federal court. This includes my time at Indiana University's Conservation Law Clinic, for which I earned the only A+ in the history of the clinic, and my current position with the U.S. Army Corps of Engineers. In addition, my role as Executive Editor of the Indiana Law Journal (wherein I am responsible for the final round of review before articles are sent to print), has made me intimately familiar with the rules of legal citation.

I have included my resume, writing sample, and transcript. Also included are letters of recommendation from Provost Emerita Lauren Robel, Professor Charles Geyh, and Professor Robert Fischman. Please do not hesitate to contact me if you have any questions.

Sincerely,

Kyle Reeves

KYLE REEVES

(727) 667-9246 ♦ kylereev@iu.edu

Education

Indiana University Maurer School of Law — Bloomington, IN
J.D. Candidate — Expected May 2024
Activities: — GPA: 3.519

- Indiana Law Journal – Executive Editor (Vol. 99), Associate (Vol. 98)
- 2022 Sherman Minton Moot Court Competition – Quarterfinalist
- 2023 Internal Trial Competition – Semifinalist
- 2023 Chicago Bar Association Moot Court Competition – Team Member (To be held in November)
- American Constitution Society – Program Manager

Honors and Awards:

- Dean's Honors – Spring 2023
- Highest Grade Award – Administrative Law, Conservation Law Clinic
- Oral Advocacy Honors – Sherman Minton Moot Court Competition

University of North Florida — Jacksonville, FL
B.S. in Biology, Concentration in Ecology and Evolution — December 2015

Selected Experience

U.S. Army Corps of Engineers — Louisville, KY
Student Trainee, Office of District Counsel — May 2023 – Present

- Drafts legal memoranda advising regulatory division on enforcement actions under federal statutes
- Assists litigation division in discovery matters for suits in which the Corps is a defendant

Conservation Law Center — Bloomington, IN
Legal Intern — Jan – May 2023

- Assisted clients in litigating conservation issues through citizen suits under relevant federal statutes, such as the Clean Water Act and Administrative Procedure Act

Maurer School of Law — Bloomington, IN
Research Assistant — Nov – Dec 2022

- Worked closely with former IU Provost Lauren Robel on an amicus brief in the Indiana Supreme Court case *Members of the Medical Licensing Board of Indiana, et al. v. Planned Parenthood*

Eleventh Judicial Circuit Court of Florida — Miami, FL
Judicial Intern — May – Aug 2022

- Worked in chambers with Hon. Jose Rodriguez, performing legal research to assist in dispositions of pretrial motions
- Helped edit and cite check treatise on Florida Civil Procedure

Ratzan, Weissman & Boldt — Miami, FL
Summer Associate — May – Aug 2022

- Interacted with clients and drafted motions for civil and criminal proceedings

Skills and Interests

●Acting ●Animal Husbandry ●Reading Political Biographies ●Semi-fluent in Japanese

Academic Record of **Reeves, Kyle**

J.D. in progress

Graduated from **University Of North Florida** on 12/1/2015. Major: Biology, Specialization.

Student ID: 2000934925

Indiana University
Maurer School of Law -- Bloomington

I Semester 2021-2022

Legal Res & Writing	Downey, R.	B542	2.0	B
Legal Profession	Wallace, S.	B614	1.0	S
Contracts	Mattioli, M.	B501	4.0	B+
Torts	Lubin, A.	B531	4.0	B+
Civil Procedure	Geyh, C.	B533	4.0	B+

Sem 45.60/14=3.26 `Cum 45.60/14.0=3.257 Hours passed 15.0

II Semester 2021-2022

Legal Research & Writing	Downey, R.	B543	2.0	B+
The Legal Profession	Wallace, S.	B614	3.0	B+
Constitutional Law I	Williams, D.	B513	4.0	B+
Property	Krishnan, J.	B521	4.0	B
Criminal Law	Scott, R.	B511	3.0	B+

Sem 51.60/16=3.23 `Cum 97.20/30.0=3.240 Hours passed 31.0

I Semester 2022-2023

Indiana Law Journal	Sanders, S.	B674	1.0	S
^Appellate Advocacy	McFadden, L.	B642	1.0	S
Civil Procedure II	Geyh, C.	B534	3.0	A
*S Law & Development	Ochoa, C.	L750	3.0	A
International Law	Lubin, A.	B665	3.0	A-
Federal Jurisdiction	Robel, L.	B733	3.0	B+

Sem 45.00/12=3.75 `Cum 142.20/42.0=3.386 Hours passed 45.0

II Semester 2022-2023

Indiana Law Journal	Sanders, S.	B674	1.0	S
^Conservation Law Clinic	Freitag, C	B558	3.0	A+*
Administrative Law	Hammond, A.	B713	3.0	A*
Evidence	Orenstein, A.	B723	4.0	A-
#Wildlife Law	Fischman, R.	B550	3.0	A+
Crim Pro: Trial	Scott, R.	B602	3.0	A-

Dean's Honors Sem 61.90/16=3.87 `Cum 204.10/58.0=3.519 Hours passed 62.0

Hours Incomplete 0.0

Grade and credit points are assigned as follows: A+ or A = 4.0; A- = 3.7; B+ = 3.3; B = 3.0; B- = 2.7; C+ = 2.3; C = 2.0; C- = 1.7; D = 1.0; F = 0. A "C-" grade in our grading scheme reflects a failing grade and no credit. An "F" is reserved for instances of academic misconduct. At graduation, honors designation is as follows: Summa Cum Laude - top 1%; Magna Cum Laude - top 10%; Cum Laude - top 30%. For Dean Honors each semester (top 30% of class for that semester) and overall Honors determination, grades are not rounded to the nearest hundredths as they are on this record. Marked (*) grades are Highest Grade in class. Since this law school converts passing grades ("C" or higher) in courses approved from another college or department into a "P" (pass grade), for which no credit points are assigned, there may be a slight discrepancy between the G.P.A. on this law school record and the G.P.A. on the University transcript. Official transcripts may be obtained for a fee from the Indiana University Registrar at the request of the student .

123073

June 17, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing in strong support of Kyle Reeves' application for a clerkship. Mr. Reeves was my student in Federal Jurisdiction, where he did quite well in a class of extremely good students. My enthusiasm for Kyle, however, is primarily the result of working with him on an amicus brief in the Indiana Supreme Court. Simply put, Kyle shone in both his writing and his research, and provided critical insights into the shape of the argument.

Kyle was one of four students who volunteered to participate in the research and writing of this brief, and he was the only second-year student in the group. The brief involved issues of first impression under the Indiana constitution. He quickly oriented himself in the subject and digested the other briefs in the case. He was extraordinarily diligent in unearthing historical source material that was important to the ultimate argument and relating it to the central arguments we were advancing. He recognized the importance of key pieces of evidence immediately and communicated quickly and well on both his findings and, more importantly, their relevance to our case. He was both responsive and self-directed.

In short, Kyle Reeves demonstrated all of the analytical and synthetic ability, writing skill, research depth, and personal diligence that is needed for outstanding performance as a law clerk. His class performance was similarly impressive. I recommend him without reservation.

Yours,
Lauren Robel
Provost Emerita
Val Nolan Professor of Law Emerita
Indiana University Maurer School of Law

Lauren Robel - lrobel@indiana.edu - 855-8886

June 17, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Kyle Reeves for a clerkship in your chambers. I know Mr. Reeves principally as a diligent, engaged student in my spring 2023 Wildlife Law class who earned an A+ in a challenging course against stiff competition. Many of the students in the class entered with academic or professional experience in environmental issues. That can be intimidating for a student like Mr. Reeves, who took the class out of general interest and enrichment. He compensated for lack of background in environmental law with determination and passion. I met with him several times to discuss his progress. I can report that he is sincerely committed to developing his legal craft.

Most relevant to your needs for a clerk is Mr. Reeves's excellent legal skills. I observed him deeply engage with the primary sources, constructively participate in class discussion, and deploy keen analysis. Wildlife Law requires students to work independently and maintain a high level of engagement. Mr. Reeves's performance reflected consistent preparation. He clearly does not wait until due dates to examine complex assignments.

In Wildlife Law, I employ short (300-1200 word), frequent (almost weekly) graded assignments as a means of instruction. I also require students to provide weekly responses to discussion questions that force them to question the holdings of cases. Mr. Reeves's writing skills are superb, and his strong performance reflects a supple analytical mind. He applied casebook primary sources to difficult new fact situations, which demands the kind of skills you are likely to find helpful in your chambers. The assignments do not test research skills, only writing and analysis. The assignments have restrictive maximum word limits, requiring students to cut right to the nub of an issue. Mr. Reeves's writing displayed sharp, critical thinking under time pressure.

Though he earned an A+, Mr. Reeves struggled at first with my stingy word maximums in the writing assignments. His early assignments sought to cover too many peripheral issues to demonstrate all the dead ends he pursued in his analysis. However, he proved open to constructive criticism and quickly began writing much better focused memos that plunged right into the dispositive issues. He adapted to a more concise writing style that eschewed general summaries of doctrine and cases. He quickly learned to write narrowly, explaining how an idea, regulatory regime, or case might apply to a novel situation.

I will note in concluding that Mr. Reeves is personable and inquisitive. We frequently discussed common interests and current events after class. During the semester, he gained respect and admiration from his classmates, toward whom he always showed kindness. Whenever I posed a particularly difficult question to the class that yielded no immediate volunteer responses, Mr. Reeves stepped up to get the discussion ball rolling in his soft-spoken, understated style. He is also ambitious and determined. I think he would be the kind of clerk who contributes not only to the work but also to the collegiality of a chambers.

If you would like to talk at greater length about my experience with Mr. Reeves, please email me at rfischma@iu.edu or call at 812-855-4565.

Sincerely,

Robert Fischman
George P. Smith, II Distinguished Professor of Law
Indiana University Maurer School of Law

June 17, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this letter in enthusiastic support of Kyle Reeves' application for a clerkship with your office following his graduation from law school in the spring of 2024.

Kyle is a rare talent who, like many of our best and brightest, has exhibited a pronounced upward trajectory over the course of his law school career. I got to know Kyle nearly two years ago, as a first-year student in my civil procedure class (which covers the rules of litigation procedure). He impressed me as very bright, articulate, and capable, but underperformed on the exam, receiving a grade that, while respectable, did not reflect his abilities and placed him in the middle of the pack. By the next fall, in my civil procedure 2 course (which covers jurisdiction and related concepts) Kyle had hit his stride. He was, hands down, the strongest performer in my class throughout the term, and received a well-deserved A for the class.

I recommend Kyle to you for five reasons:

First, Kyle is engaged. In Civil Procedure 2, Kyle was always prepared for class. He participated actively and well in class discussions. When the going got tough, Kyle was one of my go-to students—the scant handful I could count on to "get it" when others could not.

Second, Kyle is smart. His responses in cold-calls were on point. Our conversations during office hours manifested an agile, and inquisitive mind. He is quick to grasp complex concepts and ask probing questions that manifest an exceptional command of the subject. His analytical skills are second to none.

Third, Kyle thinks deeply. Our wide-ranging conversations in my office often focused on cutting edge developments in jurisdiction. Our discussions of the Supreme Court's impending decision in Mallory v. Norfolk Southern Railway, felt less like Q&A between teacher and student, than a back and forth between colleagues.

Fourth, Kyle is a superb communicator. He is well-spoken. He is concise. He conveys complex ideas with clarity.

Fifth, Kyle is unflappable. He manifests grace under pressure and shows no outward signs of stress when speaking in class—even when his views are probed and challenged.

To end where I began, Kyle will be an excellent clerk. I recommend him to you enthusiastically and without reservation.

Sincerely,

Charles G. Geyh
Distinguished Professor and John F. Kimberling Professor of Law
Indiana University Maurer School of Law

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KYLE REEVES

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The attached writing sample is the excerpted introduction and argument sections of a memorandum written during my internship with Indiana University's Conservation Law Clinic. Written in the context of a citizen suit under the Clean Water Act, the memorandum analyzes the testimony of one of our expert witnesses for vulnerabilities and anticipates potential attacks by defense counsel. The memo represents my own work product and has not been substantially edited by another person. All names and other identifying information contained within have been changed to protect confidentiality.

Introduction

This memo is in response to the request to research potential attacks against Stephanie Brown's October 22, 2022, report, which was written as a rebuttal response to the opinions of Todd Carter. Brown, a registered wetland scientist with 27 years of experience conducting stream and wetlands delineations, was retained in this case to support claims that Native Farms filled jurisdictional wetlands and ditches without a permit in violation of the Clean Water Act. After Brown produced her initial report in May of 2022, Native Farms retained their own experts to support their assertion that the site in question contained no wetlands and that the filled ditches were non-jurisdictional. One of those experts was Todd Carter, a hydrogeologist with A. M. Environmental, who issued four opinions countering certain conclusions in Brown's initial report. These opinions asserted, among other things, that the filled ditches were stagnant and that tiling and filling them did not have a detrimental effect on flow rate or water quality downstream of the site. Brown in turn produced another report rebutting Carter's opinions, and this memo details potential issues Native Farms may raise in a Daubert motion challenging her latest report.

The standard established by the U.S. Supreme Court in *Daubert v. Merrell Dow Pharms.*, Inc., 509 U.S. 579 (1993) allows expert witness testimony to be excluded if the trial judge finds that the expert lacks requisite qualifications, or that the proffered testimony is unreliable or irrelevant. Based on questioning by defense counsel during Brown's second deposition on December 2, 2022, it is possible that Native Farms may file a Daubert motion challenging Brown's qualifications to testify about soil characteristics, as well as the reliability of several of her conclusions regarding the impacts of Native Farm's modifications to the site. Some of these challenges—especially those that relate to Brown's conclusions about the presence of wetlands and the proper methods for determining such—will be easy to counter because of the nature of wetland delineations and her experience in

performing them. Potential challenges that go to the lack of personal observation or measurements by Brown, however, may be more difficult to counter, but are also not as central to proving Native Farms violated the Clean Water Act.

III. Argument

Based on questioning of Stephanie Brown during her second deposition by Native Farms' counsel, Native Farms is likely to challenge Brown's rebuttal opinions to Carter's report on grounds of qualification and reliability. First, Native Farms may argue that Brown lacks the requisite qualifications to render opinions on issues relating to soil properties because she is not a registered soil scientist. Second, Native Farms may challenge the reliability of Brown's conclusion that the measured height differences within the filled portion of Big Island Ditch (BID) are due to measuring error because the conclusion is based solely on her experience. Third, Native Farms may challenge the reliability of Brown's conclusion that the modifications to the site have altered BID's baseflow because she has never directly measured or observed the ditch's flow since the modifications were made. Fourth, Native Farms may challenge the reliability of Brown's conclusion that the modifications to the site have had a detrimental impact on downstream fishing and boating activities because she has only spoken to a single resident regarding kayaking, and none regarding fishing. Finally, Native Farms may challenge the reliability of Brown's conclusion that the new drainage system does not allow sufficient time for pollutant filtration because she does not rely on any data, but only knowledge of "universal concepts."

A. Native Farms may challenge Brown's conclusions regarding soil filtration and characteristics on grounds that she is not qualified as a soil scientist.

During Brown's second deposition, counsel for Native Farms questioned her repeatedly about the conclusions she formed reviewing soil boring logs from the CAFO site, as well as about a

statement in her rebuttal to Carter regarding soil retention time and pollutant removal. 2d Brown Dep. at 10; 47-48; 53-74. At one point, counsel for Native Farms specifically asked her if she was a registered soil scientist. 2d Brown Dep. at 48. From this line of questioning, it can be inferred that Native Farms may challenge her qualifications to render opinions on soil characteristics.

The Seventh Circuit has held that experts must have sufficient knowledge and experience in the specific field in which they are testifying, not simply a general or related field. See *Gayton v. McCoy*, 593 F.3d 610, 617 (7th Cir. 2010) ("The question we must ask is not whether an expert witness is qualified in general, but whether his qualifications provide a foundation for him to answer a specific question." (Internal quotation marks omitted)). The court has also held that "[a] scientist, however well credentialed he may be, is not permitted to be the mouthpiece of a scientist in a different specialty," because doing so "would not be responsible science." *Dura Auto. Sys. of Ind., Inc. v. CTS Corp.*, 285 F.3d 609, 614 (7th Cir. 2002). In *Dura*, the plaintiff offered the testimony of Nicholas Valkenburg, a hydrogeologist who had reviewed groundwater models to conclude that the defendant corporation's pumping activities had polluted the groundwater within a well field's "capture zone." *Id.* at 611-12. The court held that while Valkenburg "could have testified that the well field was contaminated . . . and that if [defendant's] plastics plant was within the well field's capture zone some of the contamination may have come from that plant," he was not qualified to comment on the accuracy of groundwater models produced by others, because he lacked the specific expertise in mathematics that was used in constructing them. *Id.* at 613, 615.

Native Farms may challenge any of Brown's conclusions that rely upon soil data on the grounds that her background as a wetlands scientist does not qualify her to testify specifically about soil properties. However, due to Brown's years of experience using soil borings to determine water table levels, it is unlikely defendants will be able to successfully exclude any part of her opinions that

uses soil data to determine the existence of wetlands. Unlike the expert in *Dura*, she is not merely serving as the mouthpiece for a scientist in a separate field that she lacks specific expertise in; rather, she routinely collects soil borings in her own work. Even so, they may be more successful challenging her comments on soil filtration and pollutant removal by arguing that expertise in the use of soil data to measure water tables does not "provide a foundation" to comment on the specific question of pollutant filtration.

B. **Native Farms may challenge several of Brown's conclusions on the grounds that they are unreliable.**

The Seventh Circuit has held that "even a supremely qualified expert cannot waltz into the courtroom and render opinions unless those opinions are based upon some recognized scientific method," *Smith v. Ford Motor Co.*, 215 F.3d 713, 718 (7th Cir. 2000), and that a court must "rule out subjective belief or unsupported speculation." *Cummins v. Lyle Indus.*, 93 F.3d 362, 368 (7th Cir. 1996). Phrased differently, trial courts must "determine whether the evidence is genuinely scientific, as distinct from being unscientific speculation offered by a genuine scientist." *Rosen v. Ciba-Geigy Corp.*, 78 F.3d 316, 318 (7th Cir. 1996). Therefore, despite Brown's well-established qualifications in the field of wetland delineation, Native Farms may still challenge specific conclusions on the grounds that they are unsupported by reliable methodology. In particular, they may challenge the reliability of her conclusion that the recorded height differences in the filled portion of BID were the result of measuring error, her conclusion that the site modifications have reduced BID's baseflow, her conclusion that filling BID has had a detrimental effect on downstream fishing and boating opportunities, and her conclusion that the new drainage system has reduced the soil's ability to filter out pollutants from agricultural runoff.

i. Native Farms may challenge as unreliable and speculative Brown's conclusion that the recorded differences in water elevation in the filled portions of BID are due to inaccuracy or human error because the conclusion is not based on any data, but only her experience.

In Brown's rebuttal opinion to Carter's report, she challenged his conclusion that recorded differences in water elevation between the eastern and western ends of the filled portion of BID indicated that water flowed in the opposite direction from the rest of the ditch. Brown Rebuttal to Carter at 2. In rebutting this conclusion, she argued that the survey data cited by Carter was likely inaccurate, stating "[f]rom my own experience conducting longitudinal stream surveys, precision when collecting the elevation of a non-solid surface is not an easy thing." Brown Rebuttal to Carter at 2. Because Carter's assertion that the filled portion of BID is actually a separate ditch is central to their claim that they did not require a permit to fill it, Native Farms may challenge Brown's conclusion as unreliable because she cited only her "own experience."

In *Clark v. Takata Corp*., the court affirmed the exclusion of a report by Dr. James Lafferty, an expert in the fields of mechanical engineering and biomechanics, which concluded that the faulty design of a seatbelt caused the plaintiff's head to strike the interior of his car during a collision. 192 F.3d 750 (7th Cir. 1999). Not doubting Dr. Lafferty's qualifications to testify on the subject, the court nonetheless excluded his testimony as unreliable because he "conducted absolutely no scientific tests to determine the forces acting on the lap belt at the time immediately before and during the impact and rollover, including [plaintiff's] height, weight, and the force of the impact as related to the speed of the striking vehicle." *Id.* at 758. The court also quoted the following segment of his deposition:

> Q: What is your basis for saying that a properly functioning belt would keep him from reaching the roof rail?
>
> A: The lap belt would hold him down.
>
> Q: And what testing or data base do you rely upon in offering that opinion?

A: My experience.

Q: Is that it?

A: That's it.

Id.

Just like the opinion of the expert in *Clark*, Brown's conclusion regarding the measured height differences in the filled portion of BID may be challenged as unreliable and unsupported speculation based only on her "experience." Although measuring the water levels in the ditch was impossible after it had been filled, the court may not look favorably on Brown citing only her experience on this point while Carter has cited professional surveys and USGS measurements.

ii. Native Farms may challenge the reliability of Brown's conclusion that the modifications to the site have reduced BID's baseflow because she has never measured its flow since the pumps were added.

In Brown's rebuttal to Carter's report, she concluded that the modifications to the drainage system would result in BID having reduced baseflow and remaining dry most of the year. Brown Rebuttal at 5. At her second deposition, counsel for Native Farms asked her if she had ever actually visited the CAFO site. She confirmed that though she had briefly viewed the site from the side of the county road out of curiosity, she had not visited the site in forming her opinions. 2d Brown Dep. at 38-39. Brown also stated that she conducted no measurements to support this conclusion. *Id.* at 120. Further, her assertion that BID previously had a steady baseflow was based partially on aerial photography, which was taken intermittently and sometimes several years apart. *Id.* at 120-21. Based on this line of questioning, Native Farms may challenge the reliability of her conclusion regarding potential reduced baseflow in BID because she never visited the site to conduct her own measurements.

In *Kirk v. Clark Equip. Co.*, 991 F.3d 865 (7th Cir. 2021), the court excluded the testimony of Daniel Pacheco, a licensed engineer with years of experience providing forensic analysis of

mechanical engineering issues. The dispute in question involved an accident at a steel factory, in which the plaintiff's leg was injured while operating a mechanical loader. In his report, Pacheco opined that "the unreasonably dangerous condition" of a loader "directly contributed to cause the leg injury suffered by [plaintiff.]" *Id.* at 871. The court rejected this testimony because Pacheco "did not view, inspect, or operate the Loader in person. . . . [h]e never visited [defendant's] factory or inspected the accident site beyond photographs." *Id.* at 876.

Just like the opinions of the expert in *Kirk*, Brown's conclusion may be vulnerable to attack because she never visited the CAFO site, and no measurements or tests were performed. To a certain extent, these challenges can be defeated based on the fact that desktop reviews of publicly available information are part of the standard methodology of wetland delineations, and review of historical aerial photography in particular is recommended practice in the Corp's delineation manual. USACE Record at 188-97. However, while these facts establish the reliability of Brown's methods in determining the existence of wetlands, it will be more challenging to defend a conclusion that modifications have reduced BID's baseflow in the absence of any measurements or data.

iii. Native Farms may challenge the reliability of Brown's conclusion that the modifications to the site are detrimental to downstream fishing and boating opportunities because the conclusion was based on a conversation with a single resident.

As covered in section B.ii, Brown used the new information on Native Farms' modified drainage system (as provided in Carter's report) to conclude that the modifications would result in BID having reduced baseflow and remaining dry most of the year. She then followed up this initial conclusion by asserting that this would have "a detrimental impact on downstream boating and fishing opportunities." Brown Rebuttal at 5. During her second deposition, counsel for Native Farms pressed her on what opportunities she was referring to, and she replied that she had spoken with local residents who had kayaked in BID. Brown 2nd Dep. at 123-25. When asked if she had

spoken to anyone who was no longer able to kayak or fish downstream of the CAFO site, she admitted that she had only spoken with a single local who was unable to kayak, and none who were unable to fish. *Id.* Based on this line of questioning, Native Farms may challenge the reliability of Brown's conclusion regarding impacts on downstream fishing and boating opportunities because they were based on an interview with a single resident.

Though the Seventh Circuit has not spoken on the particular issue of expert witnesses relying on interviews with private residents in suits under the CWA or similar statutes, there is persuasive authority from other jurisdictions. In *Jones Creek Inv'rs, LLC v. Columbia Cnty.*, the trial court considered testimony by Dr. Donna Wear, a biologist retained by plaintiffs to testify on the impacts of unlawful sedimentary discharge on the ecology of the Jones Creek and Savannah River watershed. 2013 U.S. Dist. LEXIS 201501 at *38 (S.D. Ga. 2013). The court admitted her testimony regarding the general adverse effects of increased sedimentation (such as food-chain disruption and reduced breeding habitats for fish), holding that such testimony was admissible because Wear had collected her own turbidity measurements of the site, and because her background in ecology made such general propositions "within her area of expertise." *Id.* at *44.

The court excluded, however, her testimony that increased sedimentation had resulted in reduced populations of a particular species of wading bird within the watershed, which the court noted was "based principally on her interview of one unidentified female who has lived in [the watershed area] for an unknown number of years." *Id.* at *45. Chiding the expert for "t[aking] these casual observations by a stranger as gospel," *id.* at *46, the court held that "[w]hile experts may rely on information provided by fact witnesses, this is only true if the information is of the type reasonably relied upon by experts in the particular field," and that "it is not reasonable to rely on the homeowner's statements without independent analysis and investigation." *Id.* at *47.

In this case, while Brown may be qualified to testify about the general impacts of altering the hydrology of the Arcadia River watershed, any claims about *specific* impacts, such as reduced boating activities, may be vulnerable to attack if based solely on interviews with residents. If Native Farms raises this challenge in a Daubert motion, it may be necessary to show that conducting such interviews is standard procedure for wetlands scientists when assessing downstream impacts, something the record does not speak on. On the other hand, the exclusion in *Jones Creek* was based partially on the hearsay concerns inherent in relying on unsworn testimony by an unknown resident. Such concerns will likely be mitigated by having citizen plaintiffs testify about their own observations rather than relying on an expert witness who echoes them.

iv. Native Farms may challenge the reliability of Brown's conclusion that the new drainage system reduces the ability of the soil to filter out pollutants in agricultural runoff because she cited no analysis.

In Brown's rebuttal to Carter's report, she concluded that the modified drainage system, with its steeper pipes, will likely not allow sufficient time for microbial activity and plant uptake to assist with pollution removal. Brown Rebuttal to Carter at 4. She cited no analysis, and at deposition conceded that she had performed no testing of the microbial activity or the agricultural runoff from the site. Rather, she cited knowledge of "universal concepts" that were true for all natural systems. 2d Brown Dep. at 121-23.

The Seventh Circuit has held that an expert must "substantiate his opinion; providing only an ultimate conclusion with no analysis is meaningless." *Huey v. United Parcel Serv.*, Inc., 165 F.3d 1084, 1087 (7th Cir. 1999) (internal quotation marks omitted). The plaintiff in *Huey* had alleged that his termination by UPS was retaliatory and the result of his complaints of racial discrimination. To support this, he offered the report of a forensic vocational expert with a Ph. D. in human resource development. *Id.* at 1086. The expert concluded that "from the facts presented, based on my professional experience and training and exposure to current laws and regulations as an employment

agent for over thirty years . . . [plaintiff] was the victim of a retaliatory discharge by UPS for racially motivated reasons in violation of Title VII." *Id.* The court excluded this testimony, noting that "[e]xperts in discrimination cases often do statistical analysis to determine whether race (or some other protected characteristic) is an explanatory variable," but that this expert "had done no such thing . . . . He did not attempt to reconstruct the underlying facts . . . . He did not explain what field of knowledge a professional in human resource development masters or how this knowledge was employed to analyze [Plaintiff's] situation." *Id.*

Like the expert in *Huey*, Brown's conclusion here may be challenged on the grounds that it provides only an ultimate conclusion with no analysis. Defendants may assert that she did not perform any of the analysis that would be expected to conclude that the explanatory variable (Native Farms' modifications to the drainage system) was responsible for the alleged harm (higher pollutants in agricultural runoff from the site), nor did she explain how her knowledge of natural systems was employed to analyze the situation. While that may be true, this case may be distinguished in that the allegation that the employer in *Huey* terminated the plaintiff for racially motivated reasons was the central issue underlying the suit. Brown's conjecture on the potential effects of the modifications performed on the CAFO site are tangential to the ultimate issue of whether Native Farms violated the CWA by filling jurisdictional wetlands.

IV. Conclusion

Based on the preceding analysis, Native Farms will likely not be successful challenging either Brown's qualifications to comment on soil data, or the reliability of her use of such data (along with aerial photography) as part of a desktop review to determine the existence of wetlands. They may be more likely to succeed, however, if they challenge any of her conclusions regarding the specific effects of their modifications to the site for which she cites no measurements or quantifiable data.

Those conclusions, though, are mostly tangential or irrelevant to the question of whether Native Farms violated the CWA through filing and tiling activities.

Applicant Details

First Name	**Dylan**
Middle Initial	**S**
Last Name	**Reichman**
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Contact Phone Number	**(973) 747-5325**

Applicant Education

BA/BS From	**Haverford College in Pennsylvania**
Date of BA/BS	**May 2016**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 20, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**American Criminal Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

DYLAN S. REICHMAN

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March 23, 2023

The Honorable Judge Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Application—2024–2025 Term

Dear Judge Walker:

I am writing to apply for a 2024–2025 term clerkship in your chambers. I am a third-year law student at the Georgetown University Law Center and a member of the Executive Board of the *American Criminal Law Review*. After graduation, I will join WilmerHale as an Associate Attorney in the firm's New York office, where I am excited to develop my skills as a lawyer and grow as a writer and researcher. My experience working to hold the powerful to account and to correct miscarriages of justice through exonerations has led me to admire your career. It would be an honor to continue to learn from you and aid in the adjudication of meaningful cases as your clerk.

I have been fortunate to have had several meaningful professional opportunities, before and during law school, that have strengthened my desire to pursue a clerkship in your chambers. Before law school, I served as a Paralegal in the Philadelphia District Attorney's Office's Conviction Integrity and Special Investigations Unit, where I helped to pursue exonerations and investigate and prosecute police misconduct. There, I learned the value of holding all parties in the legal system to the highest standards and gained a deep understanding of the anatomy of a criminal case from investigation through postconviction litigation. As a Legal Intern at the United States Attorney's Office for the Southern District of New York and a Legal Extern at the Department of Justice's Antitrust Division, I observed and embraced the standards of the rigorous practice of complex, high-stakes litigation in the Southern District and across the country. Finally, my pro bono work during law school has helped to ground me in an understanding of the impacts that the law has on individuals, highlighting the importance of diligence, ethics, and a relentless work ethic as a participant in the system. I am proud to anticipate graduating with Exceptional Pro Bono Recognition honors.

Attached please find my resume, writing sample, law school transcript, and letters of recommendation. In addition, attached is a letter from Assistant Dean Marcia Pennington Shannon providing further information about Georgetown's Curriculum B for first-year students, which I took. Please do not hesitate to contact me should you have any questions regarding my application. Thank you in advance for your consideration of my application.

Sincerely,

Dylan Reichman

DYLAN S. REICHMAN

126 12th St. NE, Basement, Washington, DC 20002 • (973) 747-5325 • Dsr72@georgetown.edu

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER — **Washington, DC**
Juris Doctor Candidate — Expected May 2023
GPA: 3.68
Honors: Dean's List, 2021 – 2022 Academic Year; Expected Pro Bono Exceptional Honors
Journal: *American Criminal Law Review*: Managing Editor, *Annual Survey of White Collar Crime*; Member, Executive Board
Activities: Law Fellow; Research Assistant for Professor Michael Cedrone; Law Student Volunteer: Terrance Lewis Liberation Foundation, National Registry of Exonerations, and Neighborhood Legal Services Project

HAVERFORD COLLEGE — **Haverford, PA**
Bachelor of Arts in Political Science, *Minor* in Philosophy — May 2016
Honors: *Herman M. Somers Prize* for Best Political Science Thesis; Political Science Departmental Honors
Activities: Captain, Haverford College Men's Rugby Team; General Manager, WHRC: Bi-Co College Radio
Thesis: *Affect and the Individual Post-9/11*—Accepted for publication in the *Helvidius Journal for Politics and Society*

EXPERIENCE

WILMER CUTLER PICKERING HALE AND DORR LLP — **New York, NY**
Associate Attorney — Expected September 2023
Summer Associate — May 2022 – July 2022

- Conducted legal research on class action certification on nationwide consumer antitrust class action case; conducted legal and factual research on state post-conviction exoneration case; wrote memorandum to client on Supreme Court precedent that could bear on forthcoming decision; drafted memoranda to clients regarding changes in abortion law and potential liability; summarized and presented findings regarding recent Supreme Court cases; participated in criminal defense during investigation of client.

UNITED STATES DEPARTMENT OF JUSTICE—ANTITRUST DIVISION — **Washington, DC**
Legal Extern, Washington Criminal II Section — August 2021 – November 2021

- Conducted legal research, drafted and edited motions, participated in pre-indictment investigation and case strategy.
- Drafted motions *in limine* and conducted research for a ten-codefendant Sherman Act conspiracy trial; conducted legal research on privileges and exceptions; performed legal research regarding the viability of public corruption charges against a target public official.

UNITED STATES ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK — **New York, NY**
Legal Intern, Public Corruption & Money Laundering and Transnational Criminal Enterprises Units — June 2021 – August 2021

- Conducted legal research, drafted and edited briefs, prepared memoranda on legal and investigative strategy, cite-checked pleadings, participated in pre-indictment investigation, aided in case strategy, prepared for and participated in proffer sessions.
- Researched and proposed legal theories supporting honest services fraud and bribery charges in a pre-indictment, multi-target public corruption investigation; drafted a brief in opposition to motion to suppress in a complex wire fraud case; conducted legal research on Sentencing Guidelines and restitution issues in a multimillion-dollar extortion case; proposed theories of liability for a target bank manager in a transnational bank fraud and money laundering investigation.

PHILADELPHIA DISTRICT ATTORNEY'S OFFICE — **Philadelphia, PA**
Legal Intern, Conviction Integrity Unit — August 2021

- Conducted legal and factual research, drafted direct examination of grand jury witnesses, drafted the grand jury presentment, and planned case strategy for a grand jury investigation resulting in perjury charges against target homicide detectives.

Paralegal, Conviction Integrity & Special Investigations Unit — October 2018 – July 2020

- Conducted legal and factual research, drafted pleadings, reviewed evidence, prepared for grand jury witness examination, participated in strategic planning, produced discovery, coordinated with law enforcement partners, and participated in investigative strategy in prosecutions of police misconduct.
- Participated in investigations of defendants' actual innocence and/or due process violation claims; and made recommendations on the office's positions on exonerations and clemency cases; served as the assigned on a case resulting in an exoneration.

MONTGOMERY MCCRACKEN WALKER & RHODES LLP — **Philadelphia, PA**
Conflicts/Case Intake Specialist — September 2017 – October 2018

- Ensured compliance with firm policies in case intake and generated conflicts reports.

THE LAW OFFICE OF PETER GOLDBERGER — **Ardmore, PA**
Paralegal — June 2016 – June 2017

- Copy-edited and cite-checked pleadings, engaged in legal research, and conducted client communications for federal criminal appeals and habeas litigation.

Record of: Dylan S. Reichman
GUID: 828499273

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	001	31	Legal Process and Society Nan Hunter	4.00	A-	14.68	
LAWJ	002	32	Bargain, Exchange & Liability Gary Peller	6.00	B+	19.98	
LAWJ	005	31	Legal Practice: Writing and Analysis Michael Cedrone	2.00	IP	0.00	
LAWJ	009	31	Legal Justice Seminar Kevin Tobia	3.00	B+	9.99	

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	44.65	3.43
Cumulative	13.00	13.00	44.65	3.43

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	003	93	Democracy and Coercion Allegra McLeod	5.00	B+	16.65	
LAWJ	005	31	Legal Practice: Writing and Analysis Michael Cedrone	4.00	A-	14.68	
LAWJ	007	32	Property in Time Daniel Ernst	4.00	B+	13.32	
LAWJ	008	32	Government Processes Glen Nager	4.00	A-	14.68	

	EHrs	QHrs	QPts	GPA
Current	17.00	17.00	59.33	3.49
Annual	30.00	30.00	103.98	3.47
Cumulative	30.00	30.00	103.98	3.47

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	121	09	Corporations Donald Langevoort	4.00	A-	14.68	
LAWJ	1491	107	~Seminar Morris Parker	1.00	A	4.00	
LAWJ	1491	109	~Fieldwork 3cr Morris Parker	3.00	P	0.00	
LAWJ	1491	15	Externship I Seminar (J.D. Externship Program) Morris Parker		NG		
LAWJ	536	17	Legal Writing Seminar: Theory and Practice for Law Fellows Diana Donahoe	3.00	A	12.00	

	EHrs	QHrs	QPts	GPA
Current	11.00	8.00	30.68	3.84
Cumulative	41.00	38.00	134.66	3.54

----------Continued on Next Column----------

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	165	07	Evidence Mushtaq Gunja	4.00	A-	14.68	
LAWJ	1652	05	Criminal Justice II: Criminal Trials Michael Gottesman	3.00	A-	11.01	
LAWJ	455	01	Federal White Collar Crime Julie O'Sullivan	4.00	A-	14.68	
LAWJ	536	17	Legal Writing Seminar: Theory and Practice for Law Fellows Michael Cedrone	3.00	A	12.00	

Dean's List 2021-2022

	EHrs	QHrs	QPts	GPA
Current	14.00	14.00	52.37	3.74
Annual	25.00	22.00	83.05	3.78
Cumulative	55.00	52.00	187.03	3.60

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	1167	05	Anatomy of a Federal Criminal Trial: The Prosecution and Defense Perspective Jonathan Lopez	2.00	A	8.00	
LAWJ	1527	05	Habeas Corpus Post Conviction Practicum Christina Mathieson	5.00	A+	21.65	
LAWJ	1782	05	Statutory Interpretation Theory Seminar Anita Krishnakumar	3.00	A-	11.01	
LAWJ	215	08	Constitutional Law II: Individual Rights and Liberties Gary Peller	4.00	A	16.00	
LAWJ	361	03	Professional Responsibility Stuart Teicher	2.00	B+	6.66	

	EHrs	QHrs	QPts	GPA
Current	16.00	16.00	63.32	3.96
Cumulative	71.00	68.00	250.35	3.68

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	610	20	Week One Teaching Fellows (Internal Investigation Simulation: Evaluating Corruption in Corp Tran)	1.00	P	0.00	
In Progress:							
LAWJ	1245	09	Trial Practice and Applied Evidence	3.00	In Progress		
LAWJ	178	05	Federal Courts and the Federal System	3.00	In Progress		
LAWJ	309	08	Congressional Investigations Seminar	2.00	In Progress		
LAWJ	3130	09	Investigating Transnational Criminal Organizations & National Security Threats in Cyberspace	2.00	In Progress		
LAWJ	317	09	Negotiations Seminar	3.00	In Progress		

----------Continued on Next Page----------

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Dylan S. Reichman
GUID: 828499273

---------- **Transcript Totals** ----------

	EHrs	QHrs	QPts	GPA
Current	1.00	0.00	0.00	0.00
Annual	17.00	16.00	63.32	3.96
Cumulative	72.00	68.00	250.35	3.68

---------- **End of Juris Doctor Record** ----------

GEORGETOWN LAW

To Whom It May Concern:

As you may be aware, twenty percent of our first-year students are in a section placing greater emphasis on an interdisciplinary approach to law, on the interconnection between the various first-year courses and on public law. This curriculum, known as "Curriculum B," was first offered in 1991. It was developed by some of our most respected professors, in consultation with a committee of distinguished practitioners. Since that time, nearly a quarter of the law faculty has taught in Curriculum B on a rotating basis.

Curriculum B covers all the material necessary for success in upper level courses and legal practice. Students in this program have also had extensive writing experience. In addition to covering the essentials of the traditional courses, they have explored problems posed by the regulatory state and studied sources of law in history, philosophy, political theory, and economics.

Many of the courses in Curriculum B have unfamiliar names, but they cover familiar material. In Legal Process, the students learn about civil procedure and compare the procedural regime in civil trials with administrative and criminal procedure. Property in Time covers the basic principles of property law and locates them within a survey of American legal history. Bargain, Exchange and Liability explores the principles of torts and contracts and the ways in which they overlap. Legal Justice examines the main strains of modern American legal thought. Democracy and Coercion concerns the intersection of constitutional law, criminal procedure, and political philosophy. Government Processes introduces students to elements of administrative law and government regulation.

At the end of their first semester, students receive two grades that appear on their transcript. Advisory scores for year-long classes, together with score distributions for their section, are also made available to students at that time.

We are very enthusiastic about Curriculum B, and are confident that you will find the students who have participated in it to be prepared for the traditional practice of law as well as for other possible professional roles. If you have any questions, please feel free to contact me directly.

Sincerely,

Marcia Pennington Shannon
Assistant Dean, Office of Career Strategy
Georgetown University Law Center

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Dylan Reichman for a clerkship position in Your Honor's chambers. I was one of Dylan's two mentors during his internship at the U.S. Attorney's Office in the Southern District of New York in 2021. To say that Dylan exceeded my expectations would be a gross understatement. He blew me away with the quality of his work, his dedication to public service, and his eagerness to learn. I have no doubt that he will thrive as a clerk.

I cannot briefly summarize the many contributions Dylan made during his internship, so I will focus on one noteworthy example. Dylan provided tremendous assistance on a bribery case involving high-ranking current and former federal agents. Dylan's experience in the Philadelphia District Attorney's Office, where he investigated police misconduct, clearly prepared him for this case. Not only did he grasp the facts and the legal issues almost immediately, he so completely lost himself in the assignments that at one point I gently encouraged him not to spend so many late nights on these assignments. His primary project was drafting sections of our prosecution recommendation. Dylan focused on the complex legal issues attending our case, including recent Supreme Court decisions narrowing the scope of public corruption prosecutions. His writing and analysis could have come from an AUSA. Most impressively, Dylan, without any handholding from me, scoured the record for evidence to support our charging theory and found financial evidence that strengthened our case. That ability to home in on the heart of a case is rare for a new AUSA, let alone a law student. Dylan's work went straight into my final prosecution recommendation with little editing and was instrumental in obtaining approval to charge the case.

For most interns, that work alone would set them apart from the typical law student. For Dylan, it was just one of many projects he completed during the summer. He helped me draft sections of an opposition to pretrial motions in a high-profile fraud case. Once again, he quickly produced work that we could seamlessly integrate into the final version. I know that Dylan completed a number of similar assignments for his other summer mentor. Even that was not enough for Dylan, however. He sought out additional work from other prosecutors, giving him the chance to see the work of other units and learn about other areas of law. I doubt there has ever been a more productive summer intern.

Dylan's prodigious work ethic comes from a sincere desire to use his talents and his energy to do good. Dylan and I had many conversations about the important role of lawyers in strengthening the rule of law, fostering ethical norms, and creating a more just society. He has seen the best and worst of law enforcement and despite that (or because of it), carries a passion for and optimism about serving the public the right way. I felt better about the work I did when I did it with Dylan. I am sure you will feel the same way too.

For these reasons and more, I offer my strongest recommendation for Dylan. If you have any other questions, I hope you will call me without hesitation.

Very truly yours,

_____

Sheb Swett
Assistant United States Attorney
(212) 637-6522
sebastian.swett@usdoj.gov

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Dylan Reichman for a clerkship position in Your Honor's chambers. I was Dylan's supervisor when he was a paralegal at the Philadelphia District Attorney's Office's ("DAO") Conviction Integrity and Special Investigations Unit ("CISIU") from October 2018 to July 2020. Since then, Dylan and I have worked on several projects together and speak regularly about his ambitions and the law in general. I have come to know Dylan closely over the last four years—both as his supervisor and as he has grown as a law student. I have no doubt that he will thrive as a clerk.

At the CISIU and in our subsequent collaborations, I have witnessed Dylan tackle everything from legal research and writing projects to complex trial preparation in several high-profile prosecutions. However, before providing particulars regarding my professional relationship with Dylan, I want to first speak about his character. When he requested a one-year postponement of his admission to law school to fulfill commitments at the DAO and further his mission of improving the criminal legal system, I knew I was dealing with a young man who was not only mature beyond his years, but also loyal, determined, compassionate, and intellectually curious. Coupling those character traits with his work ethic means that working with him, no matter the capacity, is like working with a highly respected, successful, and seasoned attorney. While his plate is always full, Dylan never fails to consistently produce extraordinary work product.

After losing Dylan to law school, in a novel turn of events in the summer of 2021, I invited Dylan to return to the DAO as a law student intern to assist me with the investigation and prosecution of three former homicide detectives for their involvement in a wrongful conviction. Although our work in the matter dated back to Dylan's tenure as a paralegal, we found ourselves faced with a looming statute of limitations issue during an unprecedented pandemic which required us to quickly develop and oversee a complex grand jury investigation. After approximately just four weeks, that investigation culminated in historic charges against all three detectives. Dylan's hard work during that time encompassed everything from legal analysis to preparing direct examination of witnesses to drafting the grand jury's presentment. Dylan's efforts in that high-stakes environment were indispensable—but for his hard work and dedication, it is likely the statute of limitations would have run before charges could be filed.

I left the DAO at the end of 2021 and became the Executive Director of the National Registry of Exonerations in 2022. Fortunately, in my new role, I once again persuaded Dylan to volunteer his time to help reform the criminal legal system—only this time our combined efforts at the Registry were more broadly focused on providing comprehensive information on exonerations of innocent criminal defendants to prevent future false convictions.

My personal and professional relationship with Dylan continues to this day; I recently enlisted him to work with me on a project for the American Bar Association, and we speak regularly about life and the law. During more than one conversation I have had with Dylan, I have expressed my personal hope that he will continue to do public interest work. The qualities he possesses—kindness, thoughtfulness, and intelligence, just to name a few—are the qualities we need to see more often in lawyers, particularly lawyers committed to advancing the greater good.

It is without hesitation that I offer my strongest recommendation for Dylan. Please feel free to contact me if you have any questions or if you need additional information.

Sincerely,

Patricia Cummings, Esq.
Former Supervisor,
Conviction Integrity and Special Investigations Unit
Philadelphia District Attorney's Office
pcummingslaw@gmail.com
(512) 789-6789

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to strongly recommend Mr. Dylan Reichman for a clerkship in your chambers. Mr. Reichman is an exceptionally bright, focused, and dedicated person who has applied himself wholeheartedly in my courses and at Georgetown generally. He is academically accomplished in his law school class, with a 3.6 GPA, and he will make an outstanding law clerk and lawyer. From the first semester I taught Mr. Reichman, I recognized that he balances superb intellect, drive, and caring humanity. I excitedly hired him as a TA; I would enthusiastically recommend him as a law clerk. He will be a real asset in chambers.

During the eventful 2020-21 academic year, Mr. Reichman was a student in my first-year legal research and writing course. Unfortunately, due to the pandemic, classes met on Zoom all year long. Even in that online setting, Mr. Reichman made a strong impression. He came to class prepared and made incisive and thoughtful comments on a regular basis. Further, even through Zoom, it was apparent he is uncommonly dedicated and caring. Mr. Reichman had worked as a paralegal at the Philadelphia District Attorney's office. In addition to consulting me about the memos and briefs he wrote for my class, he reached out to ask my advice about legal issues that grew out of his work in the DA's office when they reached out to him. I was impressed by his thoughtfulness and by the legal creativity and acumen of his suggestions. Yet, I also found him easy to coach. As a first-year law student, some of his ideas had more merit than others. He eagerly sought my guidance and that of his supervisors to be sure that his analysis and recommendations on various matters was strong. It is only very rarely that students have drawn me into their outside legal volunteerism; I am impressed when it happens.

Mr. Reichman's academic work in my class merited a grade of A-, putting him in the top quarter of students in the course. I regularly used his work as samples in class discussion. His assignments were regularly well-researched and well-reasoned. Further, he met with both his teaching assistant and me to get extra feedback on assignments. Mr. Reichman's tenacity impressed me. He continued to work on documents and went beyond my suggestions in his efforts to improve them. I believe he succeeded and would take that same approach to any assignment you give him.

I was so impressed with Mr. Reichman's abilities that I hired him to serve as one of seven Law Fellows who assisted me in teaching the course to evening students during the 2021-2022 academic year. Law Fellows for the legal writing program at Georgetown are selected through a highly competitive process that includes personal interviews and submission of a writing sample, personal statement, recommendations, and transcript. I can assure you that Mr. Reichman was one of the top candidates in a quite strong pool of some 180 applicants.

As a Law Fellow, Mr. Reichman participated with his colleagues in a weekly, two-hour seminar course during which we analyzed legal issues relating to the first-year students' assignments and discussed commenting and conferencing techniques. Mr. Reichman's contributions to this seminar class were most valuable. He easily masters large bodies of case law, and his colleagues and students benefited tremendously from his command of the law. Further, without prodding, he offered insights into his students' learning that aided me in calibrating the focus of my classroom teaching.

Mr. Reichman also wrote a bench memorandum examining whether a prison violated the First Amendment rights of a prisoner by denying her a written publication and access to a live-stream of her son's high school graduation. Mr. Reichman's memo was appropriately framed around the factors laid out in Turner v. Safely. It reflected creative thought about the strongest arguments for both parties. I believe a judge who read that memo would be well-prepared for oral arguments and would have tbe beginnings of a solid opinion deciding the matter.

As a part of his Law Fellow duties, Mr. Reichman provided detailed comments to eight of my first year students on each of their written assignments and held individual conferences with those students three times in the course of the academic year. For many of the assignments, two drafts were required of the students, each of which received extensive comments from the Law Fellows. I closely supervise comments, reading the first year student's work and revising the Law Fellow comments on it. Mr. Reichman's well-written and highly detailed comments explained his students' analytical weaknesses, logical leaps, and research gaps in clear yet supportive language. Mr. Reichman routinely identified several possible solutions for shortcomings, enabling the student writers to become independent decision-makers.

Mr. Reichman's many responsibilities as a Law Fellow required a strong work ethic. Commenting on first year students' memos and briefs is a labor-intensive task. I relied upon Mr. Reichman to send comments to me early in the process and to work steadily until he finished—often ahead of my deadlines. Given the many commitments he balanced as a second-year law

Michael Cedrone - mjc27@law.georgetown.edu - (202) 662-9568

student, this accomplishment alone was particularly impressive. More impressive yet is the fact that he communicated with me in a timely, professional, and courteous manner about how he planned to complete his work. I expect that Law Fellows will balance multiple demands. Mr. Reichman's strong communication skills and his professionalism set him apart even in this highly successful group.

As a Professor, I enjoyed full confidence in Mr. Reichman's abilities all year and relied on his exceptional judgment. His advice to our students was always on-target. On those few occasions when he was unsure how to respond, he wisely chose to consult me first. Mr. Reichman understood well the position of a Law Fellow: he respected my role as Professor and yet demonstrated appropriate independence and initiative in his role.

As you might surmise, Mr. Reichman is a student whose personal habits bear the hallmarks of a professional. Not only is he diligent in completing assigned tasks, he is also willing to help out on issues that are not strictly his responsibility when there is need or when he has expertise that is particularly valuable.

I will add that Mr. Reichman has shared personal challenges with me that occurred during his Law Fellow year. While I do not wish to detail the specific nature of the challenges he confided to me, I will say that, first, his courageous honesty in addressing these challenges impresses me deeply and, second, that these challenges never once resulted in so much as a brief delay in submitting high-quality work, much less any compromise in the quality of his work.

Mr. Reichman has my highest recommendation, as you can see. He is worthy of your investment, and he will be an excellent clerk. Please do not hesitate to contact me if I can answer any questions.

Sincerely,

Michael J. Cedrone
Professor of Law, Legal Practice

DYLAN S. REICHMAN
126 12th St. NE, Basement, Washington, DC 20002 • (973) 747-5325 • Dsr72@georgetown.edu

WRITING SAMPLE

The following writing sample is an excerpt of a memorandum I prepared as a Legal Intern for the United States Attorney's Office for the Southern District of New York to analyze legal theories supporting charges against two targets, one of whom was a public official. This writing sample omits several sections of the memorandum—including analyses of other potential charges, factual analysis, and information related to the investigation—for the sake of space and to protect confidentiality and grand jury secrecy. I have revised and edited this sample since excerpting it from the original memorandum. AUSA Sheb Swett has approved the use of this writing sample for judicial clerkship applications. AUSA Swett did not edit any of this writing sample.

Dylan Reichman – Writing Sample

You asked me to research legal theories supporting public corruption charges against a target public official and a target civilian (the "targets"). In particular, you asked me to determine whether the targets could be charged with bribery, 18 U.S.C. § 201, under the "stream of benefits" theory. Ultimately, I believe the targets can be charged with violating the "lawful duty" species of bribery, 18 U.S.C. §§ 201(b)(1)(C) & (2)(C), under the "stream of benefits" theory.

I. ELEMENTS OF THE OFFENSE

Bribery of a public official has four elements: 1) giving a thing of value; 2) to a public official; 3) with corrupt intent, in the form of a *quid pro quo* agreement; and 4) to influence an official act, induce the commission of a fraud on the United States, or to induce the official's violation of a lawful duty. 18 U.S.C. § 201(b); *see also United States v. Valle*, 538 F.3d 341, 344–45 (5th Cir. 2008) (outlining elements of § 201(b)).

A. *Thing of Value*

i. Generally

A bribe must involve the giving and/or receiving of a "thing of value." § 201(b). The phrase "thing of value" is construed broadly; any payment or good that the public official subjectively believes has value constitutes a "thing of value." *See, e.g.*, *United States v. Crozier*, 987 F.2d 893, 901 (2d Cir. 1993). The definition of "thing of value" extends beyond monetary payments. *See United States v. Moore*, 525 F.3d 1033, 1048 (11th Cir. 2008) (holding that "monetary worth is not the sole measure of value" in a bribery scheme). Other "things of value" can include "intangibles, such as freedom from jail and greater freedom while on pretrial release," *United States v. Townsend*, 650 F.3d 1003, 1011 (11th Cir. 2011), or promises of future employment. *United States v. Gormon*, 807 F.2d 1299, 1305 (6th Cir. 1986).

The thing of value need not be conferred directly to the public official; indeed, it can be given to third parties when doing so benefits the public official. *See, e.g.*, *United States v. Demizio*, 741 F.3d 373, 374, 382 (2d Cir. 2014) (kickbacks made to defendant's brother and father) (collecting cases); *United States v. McDonough*, 56 F.3d 381, 384–85 (2d Cir. 1995) (payment made to company controlled by public official's wife). It is enough for the jury to conclude that the defendant "benefitted *indirectly* from the payments to [third parties]." *Demizio*, 741 F.3d at 382–83 (emphasis added).

ii. Stream of Benefits/As Opportunities Arise

While bribes are traditionally given either before or after the public official performs an official act, *see, e.g.*, *United States v. Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998), the Second Circuit also recognizes a third type of temporal relationship between the bribe and the official act. In this type of relationship, known as the "stream of benefits" or "as opportunities arise" theory, the briber gives the public official things of value periodically as a stream of benefits in exchange for the public official performing beneficial actions on specified matters "as opportunities arise." *United States v. Ganim*, 510 F.3d 134, 149 (2d Cir. 2007) (Sotomayor, J.).

The contours of the theory have evolved over the last fifteen years. *Compare Ganim*, 510 F.3d at 149, *with United States v. Silver*, 948 F.3d 538, 552–53 (2d Cir. 2020), *and United States v. Skelos*, 988 F.3d 645, 656 (2d Cir. 2021). However, in its present formulation, a defendant may

be convicted under the stream of benefits theory where the government proves beyond a reasonable doubt that the briber and the public official agree that the public official will act on *specific kinds of matters* as the opportunities to do so arise, in exchange for things of value. *Silver*, 538 F.3d at 553. Specific payments need not be linked to specific actions taken by the public official. *Id.* at 553; *Ganim*, 510 F.3d at 144. Further, the types of matters the official will act on need not be precisely defined and the agreement to perform such acts in exchange for the bribe may be proven by circumstantial evidence. *Silver*, 538 F.3d at 557.

Ganim is the seminal stream-of-benefits case in this jurisdiction. There, the Mayor of Bridgeport, Connecticut was convicted of honest services fraud, bribery (under 18 U.S.C. § 666), and bribery conspiracy for awarding contracts to his associates' companies in exchange for a stream of kickbacks. *Id.* at 137–38. On appeal, the defendant argued that the *quid pro quo* for the charged crimes required a direct link between a specific benefit and a specific official act. *Id.* at 142. The court disagreed, instead holding that "the requisite quid pro quo for the crimes at issue may be satisfied upon a showing that a government official received a benefit in exchange for his promise to perform official acts or to perform such acts *as the opportunities arise*." *Id.* at 142 (emphasis added). Going further, the court explained that the specific official act need not be identified at the time of the promise. *Id.* at 147. In sum, the court concluded that "bribery can be accomplished through an ongoing course of conduct, so long as evidence shows that the 'favors and gifts flowing to a public official [are] *in exchange for* a pattern of official actions favorable to the donor.'" *Id.* at 149 (quoting *Jennings*, 160 F.3d at 1014) (emphasis in original).

In *McDonnell v. United States*, 136 S. Ct. 2355 (2016), the defendant was charged under the "stream of benefits" theory of bribery, but the Supreme Court did not discuss the validity of that theory in reversing the defendant's conviction. *See id.* at 2364–65. However, in *United States v. Silver*, 948 F.3d 538 (2d Cir. 2020), the Second Circuit determined that the stream of benefits theory of bribery survived after *McDonnell* but made substantial modifications to the theory. The defendant in *Silver* argued that *McDonnell* invalidated that "as opportunities arise" theory of bribery altogether. *Silver*, 948 F.3d at 552. While the court disagreed, it reinterpreted *Ganim* in light of *McDonnell*'s definition of an "official act" to circumscribe the stream of benefits theory.

Explaining that "*McDonnell* re-emphasizes that the relevant point in time in a *quid pro quo* bribery scheme is *the moment at which the public official accepts the payment*," *id.* at 556, the court reiterated *Ganim*'s holding that "[t]he 'as the opportunities arise' theory of bribery . . . requires a promise to 'exercise *particular kinds* of influence . . . as *specific opportunities* ar[i]se.'" *Id.* at 553 (emphasis added) (quoting *Ganim*, 510 F.3d at 144).

While affirming that "*Ganim*'s rule that the jury 'need not find that the specific act to be performed at the time of the promise, nor need it link each specific benefit to a single official act' remains good law," *id.* at 568 (quoting *Ganim*, 510 F.3d at 147), *Silver* clarified the stream of benefits theory in two key ways. First, the court emphasized that *McDonnell* does not require the public official, at the time of the promise, to specify the *particular means* by which he will exert his influence, stating "the official need not promise to perform *any precise act* upon the relevant question or matter." *Id.* (emphasis added).

Second, (and as discussed below) given *McDonnell*'s narrowing of § 201's definition of an "official act," *see McDonnell*, 136 S. Ct. at 2371–72, the *Silver* court "also recognized that faithfulness to *McDonnell* requires some limitation on that theory." *United States v. Skelos*, 988 F.3d 645, 656 (2d Cir. 2021). While the public official need not specify the particular *means* by

which they will affect a "question, matter, cause, suit, proceeding, or controversy," after *McDonnell*, the official must, at the time of the *quid pro quo*, "promise to take official action *on a particular question or matte*r as the opportunity to influence *that same question or matter* arises." *Silver*, 948 F.3d at 552–53 (emphasis added). That is, the specific *matter* on which the official promises to exert his influence must be identified at the time of the promise under § 201 post-*McDonnell*. Put differently, *Silver* stands for the proposition that under the "stream of benefits" theory, the defendant must specify the type of *ends* sought at the time of the *quid pro quo*, but they need not specify the *means* by which those ends are to be achieved.

The court recognized that participants in bribery schemes often do not make their criminal promises in exacting language and explained that "neither the facts of *McDonnell*, nor the Court's opinion, suggest that either the payor or the official must precisely define the relevant matter or question upon which the official is expected to exercise his official power. Circumstantial evidence demonstrating an understanding between the payor and the official will often be sufficient for the Government to identify a properly focused and concrete question or matter." *Id.* at 557 (footnotes omitted). Nonetheless, after *McDonnell*, the government must prove that a particular question or matter was specified at the time of the promise for the "stream of benefits/as opportunities arise" theory of bribery to remain viable.

It is, however, worth noting that *McDonnell*'s holding focused on the definition of an "official act," which is required to convict under § 201(b)(1)(A) but is *not* required to convict under §§ 201(b)(1)(B) & (C). It, therefore, remains an open question whether a specific "question, matter, cause, suit, proceeding, or controversy" must be identified at the time of the promise for prosecutions under those subsections. While the statute, on its face, suggests that *McDonnell* and *Silver*'s narrowing of the stream of benefits theory only applies to prosecutions under § 201(b)(1)(A), the Supreme Court's recent trend of narrowing the theories of honest services fraud and bribery out of vagueness concerns may warrant erring on the side of caution. *See, e.g.*, *McDonnell*, 136 S. Ct. at 2373; *Skilling v. United States*, 561 U.S. 358, 404 (2010). Specifying at least the general matter on which a public official promised to act would likely track closely enough to *McDonnell* and *Skilling* to avoid any issues on appeal, even if it may not be required for prosecutions under §§ 201 (b)(1)(B) & (C).

In sum, a defendant may be convicted under the stream of benefits theory where the government proves beyond a reasonable doubt that the briber and the public official agree that the public official will act on *specific kinds of matters* as the opportunities to do so arise, in exchange for things of value. *Silver*, 538 F.3d at 553. Specific payments need not be linked to specific actions taken by the public official. *Id.* at 553; *Ganim*, 510 F.3d at 144. Further, the types of matters the official will act on need not be precisely defined and may be proven by circumstantial evidence. *Silver*, 538 F.3d at 557. These requirements are met in our case, making the "stream of benefits" theory a viable one for prosecuting the targets.

B. *Public Official*

The bribery statute provides a broad definition of "public official[s]" who fall under its ambit. § 201(a)(1). A wide array of people acting "in any official function" *id.*, may qualify as public officials, as "Congress never intended section 201(a)'s open-ended definition of 'public official' to be given [a] cramped reading." *Dixson v. United States*, 465 U.S. 482, 496 (1984).

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In addition, the public official need not promise to act within the bounds of their specific authority to be found guilty of bribery. *See United States v. Carson*, 464 F.2d 424, 433 (2d Cir. 1972) ("There is no doubt that federal bribery statutes have been construed to cover any situation in which the advice or recommendation of a Government employee would be influential, irrespective of the employee's specific authority (or lack of same) to make a binding decision.").

C. *Corrupt Intent—Quid Pro Quo*

Bribery requires "corrupt intent," which comes "in the nature of a quid pro quo requirement; that is, there must be 'a specific intent to give . . . something of value in exchange for an official act.'" *United States v. Alfisi*, 308 F.3d 144, 149 (2d Cir. 2002) (quoting *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404–05 (1999)). *Quid pro quo* has also been defined, in this jurisdiction, as an "understanding that the payments were made in return for official action," *United States v. Bruno*, 661 F.3d 733, 744 (2d Cir. 2011) (cleaned up), or as "knowledge of the payor's expectations." *Ganim*, 510 F.3d at 149. *See also Silver*, 948 F.3d at 552 (explaining that "bribery criminalizes 'corrupt promise[s]'—as evidenced by the official's state of mind—not collusive agreements" (quoting *United States v. Myers*, 692 F.2d 823, 850 (2d Cir. 1982))). In sum, the corrupt intent requirement of bribery requires that there be a *quid pro quo*—an agreement that the public official will perform some official act or fraud, or violate some lawful duty, on a particular matter in exchange for the bribe.

D. *Official Act, Fraud, or Lawful Duty*

The bribery statute provides that there are three ways a government official and/or those seeking to influence them can violate the statute: 1) by attempting to influence an official act, § 201(b)(2)(A); 2) to induce the commission of a fraud against the United States, § 201(b)(2)(B); and 3) to induce the public official to violate a lawful duty, § 201(b)(2)(C).

i. <u>Influencing an Official Act</u>

a. Definition of Official Act

Section 201(a)(3) defines an "official act" as "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." In *McDonnell*, Supreme Court set forth the present construction of the phrase. There, the Governor of Virginia received over $175,000 in gifts, loans, and benefits from a businessman. The indictment alleged that McDonnell committed several official acts in exchange for the bribes: arranging meetings between the businessman and public officials to promote his product, hosting events at the Governor's mansion to promote the product, contacting other government officials to encourage Virginia state research universities to initiate studies on the product, and recommending government officials meet with the business' executives. *McDonnell*, 136 S. Ct. at 2365–66.

Turning to the text of § 201(a)(3), the Court began by observing that "[t]he last four words in that list—'cause,' 'suit,' 'proceeding,' and 'controversy'—*connote a formal exercise of governmental power*, such as a lawsuit, hearing, or administrative determination." *Id.* at 2368 (emphasis added). Applying the *noscitur a sociis* canon of construction, the Court then reasoned that "question" and "matter" must be "similar in nature" to such formal exercises of governmental power, and held that"[b]ecause a typical meeting, call, or event arranged by a public official is not

of the same stripe as a lawsuit before a court, a determination before an agency, or a hearing before a committee, it does not qualify as a 'question' or 'matter' under § 201(a)(3)." *Id.* at 2369.

Next, the Court interpreted the words "pending" and "may by law be brought," holding that those terms "suggest something that is relatively circumscribed—the kind of thing that can be put on an agenda, tracked for progress, and then checked off as complete." *Id.* Further, the Court explained that the phrase "'may by law be brought' conveys something within the specific duties of an official's position—the function conferred by the authority of his office." *Id.*

Finally, the Court explained that the phrase "any action or decision," must not be merely "related to a pending question or matter. Instead, something more is required: § 201(a)(3) specifies that the public official must make a decision or take an action *on* that question or matter, or agree to do so." *Id.* at 2730. The Court's phrasing suggests that an action or decision *on* a pending matter requires the exercise of discretion on a step involved in that matter. *See also Silver*, 948 F.3d at 568 (holding that public official must agree to "take official action *on a specific and focused question or matter*").

In sum, an official act under § 201, per *McDonnell*, is defined as:

> a decision or action on a "question, matter, cause, suit, proceeding or controversy." The "question, matter, cause, suit, proceeding or controversy" must involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee. It must also be something specific and focused that is "pending" or "may by law be brought" before a public official. To qualify as an "official act," the public official must make a decision or take an action on that "question, matter, cause, suit, proceeding or controversy," or agree to do so . . . Setting up a meeting, talking to another official, or organizing an event (or agreeing to do so)—without more—does not fit that definition of "official act."

136 S. Ct. at 2371–72.

b. Scope of Official Action

McDonnell's definition of an official act leaves open the question of how to define the specific duties or functions of a public official. However, courts have historically defined the scope of public officials' duties broadly, encompassing not only duties listed in statutes or regulations but also those that are customary or prescribed by policy.

For example, in *United States v. Birdsall*, 233 U.S. 223 (1914), the Supreme Court reviewed the bribery convictions of an attorney and two Special Officers of the Interior Department's Commission of Indian Affairs.[1] *Id.* at 228. The officers, in their capacities at the Commission, were tasked with suppressing "liquor traffic among the Indians," including by taking "appropriate steps to secure the conviction and punishment of offenders." *Id.* at 228, 232 (internal citations omitted). Under the legislative scheme at the time, the Commissioner of Indian Affairs

[1] The defendants were convicted of violating § 201's predecessor statute, *see Birdsall*, 233 U.S. at 227, but the relevant language of that statute is substantially similar to § 201, making *Birdsall* applicable to the analysis in our case. *Compare* 18 U.S.C. § 201, *with* Act of Mar. 4, 1909, ch. 321, sec. 117, 35 Stat. 1088, 1109–1110 (1909).

could recommend leniency for such defendants to the judge presiding over the case, the US Attorney, the Secretary of the Interior, the Attorney General, and the President. *Id.* at 230. Birdsall, the attorney, represented a client convicted of selling liquor to Native Americans and sought the officers' assistance in obtaining leniency for the client at sentencing. *Id.* at 229–30. The officers were charged with accepting bribes in exchange for agreeing to influence the Commissioner to recommend leniency for Birdsall's client. *Id.*

The Court reversed the district court's demurrer of the indictments. *Id.* at 236. In defining what actions fell within the scope of the officers' official duties, the Court explained that

> [t]o constitute it official action, it was not necessary that it should be prescribed by statute; it was sufficient that it was governed by a lawful requirement of the Department under whose authority the officer was acting. Nor was it necessary that the requirement should be prescribed by a written rule or regulation. It might also be found in an established usage which constituted the common law of the Department and fixed the duties of those engaged in its activities. In numerous instances, duties not completely defined by written rules are clearly established by settled practice, and action taken in the course of their performance must be regarded as within the provisions of the above-mentioned statutes against bribery.

Id. at 230–31 (internal citations omitted).

On this view, the Court defined the officers' relevant duty as the duty to "give disinterested and honest advice upon the facts known to them with respect to the advisability of showing leniency to convicted violators of the law." *Id.* at 234. The Court explained that, even though that duty was not specifically promulgated by statute or regulation, the duty was within the scope of their official functions, and therefore reversed the demurrer of the indictments. *Id.* at 231–36.

Over 100 years later, *Birdsall* remains good law. *See, e.g.*, *McDonnell*, 136 S. Ct. at 2371 ("'[O]fficial action' could be established by custom rather than 'by statute' or 'a written rule or regulation,' and need not be a formal part of an official's decisionmaking process." (quoting *Birdsall*, 233 U.S. at 230–31)); *Valdes v. United States*, 475 F.3d 1319, 1323 (D.C. Cir. 2007) (en banc) (noting that *Birdsall* stands for the proposition that the bribery statute's coverage of official acts can be based on "activities performed as a matter of custom," not just those specified by positive law); *United States v. Gjieli*, 717 F.2d 968, 977 (6th Cir. 1983) (explaining *Birdsall* held that "lawful duties and official acts extend beyond those imposed by statute to include duties and acts imposed by written rules and regulations").

As such, in our case, we need not look only to statutes or formal regulations to define the scope of the target public official's official duties. Instead, custom, written rules, and internal regulations—as well as statutes and formal regulations—combine to shape the scope of the target public official's "sphere of official conduct." *Birdsall*, 233 U.S. at 235.

In addition, the bribery statute covers more than that which is within the scope of the payee public official's official functions. An official act is defined as a matter that may by law be brought "before *any* public official." 18 U.S.C. § 201(a)(3) (emphasis added). That is, if the bribe is conferred with the intent to influence *any* specific action, even by a third-party public official, it

is illegal under § 201. The *McDonnell* court recognized as much, stating that "if a public official uses his official position to provide advice to another official, knowing or intending that such advice will form the basis for an 'official act' by another official, that too can qualify as a decision or action for purposes of § 201(a)(3)." 136 S. Ct. at 2370 (citing *Birdsall*, 233 U.S. at 234). Therefore, the payee public official need not promise to act on a matter within the scope of *their* official functions for the bribe to be criminalized; if they agree to influence a third-party public official whose functions *do* cover that matter, that is enough.

[Section Omitted]

iii. Inducing the Violation of a Lawful or Official Duty

Though most bribery cases are prosecuted under the "official act" theory, *see* § 201(b)(1)(A), there is ample support to prosecute the targets for bribery with the intent to induce the target public official to violate his lawful or official duties under §§ 201(b)(1)(C) & (2)(C).

First, it is worth noting that the subsections use both the phrases "lawful" and "official" duties. Section 201(b)(1)(C) prohibits an outsider from bribing a public official "in violation of the *lawful duty* of such official or person," (emphasis added), while § 201(b)(2)(C) prohibits a public official from being bribed "to do or omit to do any act in violation of the *official duty* of such official or person." (Emphasis added.) That dual usage suggests that the duties captured by this species of bribery need not be those solely prescribed by *law*, that is, statutes or regulations.

In addition, while the statute does not define "lawful" or "official" duties, there is good reason to think that, just like with an "official act," a "lawful" or "official duty" can be defined by reference to custom in addition to duties prescribed by statutes or regulations. *Birdsall* is directly on-point: "In numerous instances, *duties* not completely defined by written rules are clearly established by settled practice, and action taken in the course of their performance must be regarded as within the provisions of the above-mentioned statutes against bribery." 233 U.S. at 231 (emphasis added).

The proposition that lawful or official duties encompass a wider range of duties than those prescribed by statutes or regulations is reinforced by a canvas of cases prosecuted under the "lawful duty" theory. To begin, the Second Circuit has counseled that §§ 201(b)(1)(C) & (2)(C) apply where the bribe is meant to "induce actions that directly violate a specific duty, such as a prison guard's duty to prevent the smuggling of contraband," whereas the "official act" theory is more appropriate in cases "involving the exercise of judgment or discretion." *United States v. Alfisi*, 308 F.3d 144, 151 n.3 (2d Cir. 2002).

Cases prosecuted under the "lawful duty" theory suggest that the definition of a "lawful" or "official duty" can encompass a wide range of official responsibilities—prescribed by positive law, custom, or otherwise. *See, e.g.*, Indictment, *United States v. Broumand*, No. 20 Cr. 224 (C.D. Cal. Jun. 12, 2020), ECF. No. 26 (charging FBI Special Agent with accepting bribes in exchange for divulging whether individuals were under investigation and running names of individuals through law enforcement databases); *United States v. Cruz*, 946 F.2d 122, 123 (11th Cir. 1991) (affirming conviction of IRS Special Agent tasked with investigating a target who instead met with the target and offered to provide information about the investigation in exchange for bribe); *Gjieli*, 717 F.2d at 975 (affirming convictions for attempted bribe of ATF Agent in exchange for

assistance with breaking inmate out of prison); *United States v. Lanci*, 669 F.2d 391, 392–93 (6th Cir. 1982) (affirming conviction of FBI clerical employee for divulging confidential information from FBI files in exchange for bribes); *Parks v. United States*, 355 F.2d 167, 168 (5th Cir. 1965) (affirming conviction of Air Force sergeant who accepted bribes in exchange for disclosing names of all new recruits to insurance company, where bribes were "made to 'induce him to do an act in violation *of his lawful duty*' of complying with Air Force Regulations") (emphasis added); *United States v. Hall*, 245 F.2d 338, 339 (2d Cir. 1957) (affirming conviction of defendant for attempted bribery of INS investigator with the intent to "influence him to *neglect his duties*" and instead fraudulently admit foreign national to the United States) (emphasis added).

While the case law on this species of bribery is not robust, these cases stand for the proposition that bribing a public official to induce the violation of their official or lawful duties—either as established by statute, regulation, or custom—violates §§ 201(b)(1)(C) & (2)(C). These duties can include, for example, the duties to follow Air Force regulations, *Parks*, 355 F.2d at 168, or the duties to "faithfully investigate potential criminal activity, . . . only use law enforcement databases for legitimate law enforcement activity, and . . . refrain from sharing information from law enforcement databases with others." *Broumand*, Indictment at 11. Here, there is ample evidence that the target public official was bound by official and lawful duties prescribed by statutes, regulations, executive orders, government policies, and customs. These duties fall comfortably within the "lawful duty" theory of bribery. I recommend prosecuting the targets under this theory.